

IN THE UNITED STATES DISTRICT COURT  
For the Western District of Texas  
Austin Division

NETCHOICE, LLC d/b/a NetChoice, a :  
501(c)(6) District of Columbia :  
Organization, COMPUTER & :Civil Action  
COMMUNICATIONS INDUSTRY ASSOCIATION :No.

1:21-cv-00840-RP

d/b/a CCIA, a 501(c)(6) non-stock :  
Virginia Corporation, :  
Plaintiffs, :  
v. :

KEN PAXTON, in his official capacity:  
as Attorney General of Texas, :  
Defendant. :

Tuesday, November 16, 2021

Washington, D.C.

MATTHEWS SCHRUEERS, pursuant to notice, the witness  
being sworn by BARBARA MOORE, a Notary Public in  
and for the District of Columbia, taken at the  
offices of CCIA, 25 Massachusetts Avenue, NW,  
Washington, D.C., on Tuesday, November, 2021, and  
the proceedings being taken down by Stenotype by  
BARBARA MOORE, CRR, RMR and transcribed under her  
direction.

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<p>6</p> <p>1 answering whatever question you've been asked 2 beforehand. 3 What does -- what does CCIA stand for? 4 A. It's the Computer &amp; Communications 5 Industry Association. 6 Q. And what is your position at CCIA? 7 A. I'm the president. 8 Q. And what -- what are your job duties 9 there? 10 A. I oversee the organization and 11 manage its general affairs and direct its policy 12 and its legal practice. 13 Q. And what does the organization do? 14 A. It is a trade association that seeks 15 to foster its mission and the interests of its 16 members. 17 Q. And what is its mission? 18 A. Open markets, open systems, open 19 networks. 20 Q. And who -- who are some of its more 21 prominent members? 22 A. The association has 20-some members. 23 24 25</p>	<p>8</p> <p>1 Q. Through what? 2 A. Through contributions from members, 3 companies. 4 Q. Okay. To be a member, is it a 5 condition that you make a monetary contribution? 6 A. There is a dues requirement for 7 membership, yes. 8 Q. And are those dues equal across the 9 membership, or do they vary from member to member? 10 A. They are indexed by revenue. 11 Q. Indexed by revenue. What sort of 12 percentage of each company's revenue would that 13 index consist of? 14 MR. DISHER: Objection. Form. 15 THE WITNESS: Yeah, can you -- 16 BY MR. LYLE: 17 Q. So you said the dues are indexed by 18 revenue. Does that mean that each company pays a 19 percentage of its revenue? 20 A. No. 21 Q. What does "indexed by revenue" mean? 22 A. "Indexed by revenue" means that as 23 24 25</p>
<p>7</p> <p>1 They include Apple, Amazon, Facebook, Google, 2 Twitter, Pinterest, Samsung, Intel, Intuit and 3 various others. They're all on the association's 4 website. 5 Q. And how do you become a member of 6 CCIA? 7 A. There's an application process. 8 Q. And how thoroughly are applicants 9 vetted, or what are some of the requirements? 10 A. Applicants are vetted by board. 11 They need to meet criteria that the board applies. 12 And general criteria established on the application 13 form includes belonging to the industry, sharing 14 the association's mission, various other factors 15 that are for the board's consideration. 16 Q. And how would you describe that 17 industry? 18 A. The computer and communications 19 industry. 20 Q. Okay. How does CCIA receive 21 funding? 22 A. Through dues. 23 24 25</p>	<p>9</p> <p>1 revenues increase, the dues increase. 2 Q. On a company-by-company basis? 3 A. What's on a company-by-company 4 basis? 5 Q. So, for example, would a company 6 like Google pay more in dues than a company that 7 was, say, 1/100 of its size by revenue? 8 A. Yes. 9 Q. So it's fair to say that the greater 10 the revenue of the company, the more dues they pay? 11 MR. DISHER: Objection. Form. 12 THE WITNESS: Is it fair? 13 BY MR. LYLE: 14 Q. Is it accurate? 15 A. It is -- it is accurate that higher 16 annual revenues companies pay higher dues. 17 Q. Okay. Who are your three highest 18 annual revenue companies? 19 A. I don't have that information at my 20 fingertips. 21 Q. Would -- would Facebook be in the 22 top five? 23 24 25</p>

<p>10</p> <p>1 A. I don't have that at my fingertips.</p> <p>2 Q. Would Google be in the top five?</p> <p>3 A. I don't have that at my fingertips</p> <p>4 either.</p> <p>5 Q. What about Amazon?</p> <p>6 A. I don't have that at my fingertips.</p> <p>7 Q. So you don't -- you don't know who</p> <p>8 your top five dues payers in revenue are?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: I'd have to</p> <p>11 speculate.</p> <p>12 BY MR. LYLE:</p> <p>13 Q. Could you speculate, please?</p> <p>14 MR. DISHER: Objection. Form.</p> <p>15 MR. LYLE: Okay. So just let the</p> <p>16 record reflect that the deponent is</p> <p>17 refusing to speculate as to the top five</p> <p>18 dues payers.</p> <p>19 BY MR. LYLE:</p> <p>20 Q. Do you work with NetChoice in any</p> <p>21 other context besides this lawsuit?</p> <p>22 A. Context?</p> <p>23</p> <p>24</p> <p>25</p>	<p>12</p> <p>1 A. No.</p> <p>2 Q. All right. I'm going to hand you</p> <p>3 your declaration, Mr. Schruers. And I'm going to</p> <p>4 mark this as Exhibit 1.</p> <p>5 (Exhibit 1, Declaration, was</p> <p>6 marked for identification.)</p> <p>7 BY MR. LYLE:</p> <p>8 Q. Are you familiar with that document,</p> <p>9 Mr. Schruers?</p> <p>10 A. Assuming this document is a true</p> <p>11 copy of my declaration, yes.</p> <p>12 MR. DISHER: Is that document in</p> <p>13 the exhibit binder?</p> <p>14 MR. LYLE: Yes.</p> <p>15 BY MR. LYLE:</p> <p>16 Q. Who drafted that document,</p> <p>17 Mr. Schruers?</p> <p>18 A. I did, in collaboration with the</p> <p>19 association's counsel.</p> <p>20 Q. About how many drafts did that go</p> <p>21 through?</p> <p>22 MR. DISHER: I'll instruct the</p> <p>23</p> <p>24</p> <p>25</p>
<p>11</p> <p>1 Q. Yes. Apart from suing the State of</p> <p>2 Texas for NetChoice, do you work with them in any</p> <p>3 other way?</p> <p>4 A. The association is also a</p> <p>5 co-plaintiff with NetChoice in a suit against</p> <p>6 Florida.</p> <p>7 Q. Okay. You said -- you described</p> <p>8 your organization's mission earlier. As a</p> <p>9 practical matter, how does that play out in the</p> <p>10 organization's activities?</p> <p>11 A. Influences the association</p> <p>12 personnel's decision-making about what issues to</p> <p>13 prioritize and how to pursue policies that are</p> <p>14 representative of the industry's interests,</p> <p>15 generally speaking.</p> <p>16 Q. Does the organization lobby members</p> <p>17 of Congress?</p> <p>18 A. It does.</p> <p>19 Q. Does it lobby members of the Senate?</p> <p>20 A. Yes.</p> <p>21 Q. Does it make any campaign</p> <p>22 contributions?</p> <p>23</p> <p>24</p> <p>25</p>	<p>13</p> <p>1 witness not to answer to the extent it</p> <p>2 will implicate anything you've discussed</p> <p>3 or worked on with counsel for CCIA.</p> <p>4 BY MR. LYLE:</p> <p>5 Q. Who edited it and revised it?</p> <p>6 MR. DISHER: Same instruction.</p> <p>7 BY MR. LYLE:</p> <p>8 Q. Who saw drafts before you signed it?</p> <p>9 MR. DISHER: Same instruction.</p> <p>10 BY MR. LYLE:</p> <p>11 Q. When did you start drafting it?</p> <p>12 A. Prior to filing the Complaint.</p> <p>13 Q. Who did you consult with while</p> <p>14 drafting it?</p> <p>15 MR. DISHER: Again, same</p> <p>16 instruction to the extent it implicates</p> <p>17 discussions you've had with attorneys.</p> <p>18 Otherwise, you can answer.</p> <p>19 MR. LYLE: So I wasn't asking</p> <p>20 about the content of the discussions.</p> <p>21 I'm was asking about who he consulted</p> <p>22 with, which I don't believe is</p> <p>23</p> <p>24</p> <p>25</p>

<p>14</p> <p>1 privileged.</p> <p>2 MR. DISHER: You can identify who</p> <p>3 you talked to. To the extent that those</p> <p>4 conversations took place with lawyers for</p> <p>5 CCIA, do not answer.</p> <p>6 THE WITNESS: Can I identify</p> <p>7 counsel?</p> <p>8 MR. LYLE: Yes.</p> <p>9 THE WITNESS: I discussed the</p> <p>10 draft with one of our in-house counsel.</p> <p>11 BY MR. LYLE:</p> <p>12 Q. And did that in-house counsel have a</p> <p>13 role in editing and revising it?</p> <p>14 MR. DISHER: I will instruct the</p> <p>15 witness not to answer that question based</p> <p>16 on attorney-client privilege and attorney</p> <p>17 work product privilege.</p> <p>18 BY MR. LYLE:</p> <p>19 Q. Did you communicate with your</p> <p>20 members as to any of the information contained in</p> <p>21 the declaration?</p> <p>22 A. Not to my recollection.</p> <p>23</p> <p>24</p> <p>25</p>	<p>16</p> <p>1 A. I, in my joint capacity as one of</p> <p>2 the cofounders, provided input and contributed to</p> <p>3 the drafting of the framework.</p> <p>4 Q. As a cofounder of the framework or a</p> <p>5 cofounder of CCIA?</p> <p>6 A. A cofound- -- what is a --</p> <p>7 Q. I'm sorry?</p> <p>8 A. Can you give me a full question?</p> <p>9 Q. You contributed to the framework as</p> <p>10 a cofounder of the digital partnership or of CCIA?</p> <p>11 A. I contributed to the framework as a</p> <p>12 cofounder of the Digital Trust &amp; Safety</p> <p>13 Partnership.</p> <p>14 Q. Okay.</p> <p>15 (Discussion held off the</p> <p>16 record.)</p> <p>17 BY MR. LYLE:</p> <p>18 Q. I'm handing you the first seven</p> <p>19 pages of your document production of the Digital</p> <p>20 Trust &amp; Safety Partnership.</p> <p>21 MR. DISHER: Is this in the binder</p> <p>22 too?</p> <p>23</p> <p>24</p> <p>25</p>
<p>15</p> <p>1 Q. So they didn't go over any drafts or</p> <p>2 anything?</p> <p>3 A. Not to my recollection.</p> <p>4 Q. Any phone conversations or anything</p> <p>5 with them?</p> <p>6 A. Again, not to my recollection.</p> <p>7 Q. When was the Digital Trust &amp; Safety</p> <p>8 Partnership created?</p> <p>9 A. It was incorporated in approximately</p> <p>10 the first quarter of 2020.</p> <p>11 Q. And I see from the organization's --</p> <p>12 or the partnership's framework that CCIA incubated</p> <p>13 it or is incubating it. Is that correct?</p> <p>14 A. That's generally the accurate term,</p> <p>15 yes.</p> <p>16 Q. And what -- what does that mean?</p> <p>17 A. The association supports the efforts</p> <p>18 of the partnership in its activities.</p> <p>19 Q. Did the association draft the</p> <p>20 framework?</p> <p>21 A. No.</p> <p>22 Q. Did it have input on the framework?</p> <p>23</p> <p>24</p> <p>25</p>	<p>17</p> <p>1 MR. LYLE: Yes.</p> <p>2 MR. DISHER: Do you know what tab</p> <p>3 it is?</p> <p>4 MR. LYLE: 15.</p> <p>5 BY MR. LYLE:</p> <p>6 Q. Mr. Schruers, is there a significant</p> <p>7 overlap between CCIA's membership and not of the</p> <p>8 Digital Trust &amp; Safety Partnership?</p> <p>9 MR. DISHER: Hold on one second.</p> <p>10 Just to be clear, two -- it looks like</p> <p>11 that starts on page 1 of that document,</p> <p>12 not page 2. I just want to be --</p> <p>13 MR. LYLE: Yeah, you're right.</p> <p>14 (Exhibit 2, DTSP document ,</p> <p>15 was marked for identification.)</p> <p>16 MR. DISHER: Okay. So is this --</p> <p>17 this is Exhibit 2. And Exhibit 2 is</p> <p>18 Bates No. CCIA -- it looks like the Bates</p> <p>19 got cut off here. But it's the -- it's</p> <p>20 the DTSP document --</p> <p>21 MR. LYLE: Yes, it's 1 to 7.</p> <p>22 MR. DISHER: -- titled</p> <p>23</p> <p>24</p> <p>25</p>

<p>18</p> <p>1 "Digital" --</p> <p>2 MR. LYLE: "Digital Trust" --</p> <p>3 MR. DISHER: Excuse me. "Trust</p> <p>4 and Safety Best Practices Framework."</p> <p>5 MR. LYLE: Yes.</p> <p>6 MR. DISHER: Okay.</p> <p>7 BY MR. LYLE:</p> <p>8 Q. So is there -- is there a</p> <p>9 significant overlap between the partnership's</p> <p>10 membership and that of CCIA?</p> <p>11 A. There is overlap.</p> <p>12 Q. Is Facebook part of the Trust &amp;</p> <p>13 Safety Partnership?</p> <p>14 A. Yes.</p> <p>15 Q. What about Google?</p> <p>16 A. Yes.</p> <p>17 Q. What about Amazon?</p> <p>18 A. No.</p> <p>19 Q. What about Twitter?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. This -- the pages I just</p> <p>22 handed you, they include guidelines for the</p> <p>23</p> <p>24</p> <p>25</p>	<p>20</p> <p>1 BY MR. LYLE:</p> <p>2 Q. But as of now, there's no</p> <p>3 third-party auditing going on?</p> <p>4 A. At present, there is no third-party</p> <p>5 assessment of any kind.</p> <p>6 Q. How about any self-reporting at</p> <p>7 present?</p> <p>8 MR. DISHER: Objection. Form.</p> <p>9 THE WITNESS: Are you asking me</p> <p>10 are companies presently doing</p> <p>11 self-reporting?</p> <p>12 BY MR. LYLE:</p> <p>13 Q. To -- to the partnership.</p> <p>14 A. That process is currently underway.</p> <p>15 Q. Is there any -- is there anyplace</p> <p>16 one could go to look at the results of that</p> <p>17 self-reporting; the public, for example?</p> <p>18 A. At present?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. But they are reporting to the</p> <p>22 partnership?</p> <p>23</p> <p>24</p> <p>25</p>
<p>19</p> <p>1 members; correct?</p> <p>2 A. I wouldn't characterize it that way.</p> <p>3 Q. What would you characterize them as?</p> <p>4 A. I would characterize this as the</p> <p>5 practice -- framework of best practices.</p> <p>6 Q. Is there any auditing as to members</p> <p>7 complying with these practices?</p> <p>8 MR. DISHER: Objection. Form.</p> <p>9 THE WITNESS: Presently?</p> <p>10 BY MR. LYLE:</p> <p>11 Q. Yes.</p> <p>12 A. No.</p> <p>13 Q. Was there?</p> <p>14 A. No.</p> <p>15 Q. Will there be?</p> <p>16 MR. DISHER: Objection. Form.</p> <p>17 THE WITNESS: The organization's</p> <p>18 road map contemplates internal</p> <p>19 assessments and ultimately third-party</p> <p>20 assessments of implementation of the best</p> <p>21 practices framework.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>21</p> <p>1 A. No.</p> <p>2 Q. No?</p> <p>3 A. That process is currently underway.</p> <p>4 Q. Okay. On page 7, you talk about</p> <p>5 content and content-related risks.</p> <p>6 A. Sorry, who is "you"?</p> <p>7 Q. The partnership document, the best</p> <p>8 practices.</p> <p>9 A. Okay.</p> <p>10 Q. And I'm seeing that to be considered</p> <p>11 a risk, it has to be prohibited by the relevant</p> <p>12 policies and Terms of Service of the organization;</p> <p>13 correct?</p> <p>14 MR. DISHER: Objection. Form.</p> <p>15 THE WITNESS: No, I don't agree</p> <p>16 with that interpretation.</p> <p>17 BY MR. LYLE:</p> <p>18 Q. So your interpretation is there's a</p> <p>19 sort of separate metric for determining if it's a</p> <p>20 risk apart from the -- or it's irrelevant whether</p> <p>21 it's consistent with the relevant policies and</p> <p>22 Terms of Service?</p> <p>23</p> <p>24</p> <p>25</p>

<p>22</p> <p>1 MR. DISHER: Objection. Form.</p> <p>2 THE WITNESS: No, no. You said</p> <p>3 relevant policies and Terms of Service of</p> <p>4 the organization? You didn't define</p> <p>5 "organization." I assume that --</p> <p>6 BY MR. LYLE:</p> <p>7 Q. The digital -- the digital</p> <p>8 partnership on page 7, page 7 of what I handed you,</p> <p>9 says "content and conduct-related risks."</p> <p>10 A. Uh-huh.</p> <p>11 Q. This is the Digital Trust &amp; Safety</p> <p>12 Partnership framework?</p> <p>13 A. That's correct.</p> <p>14 Q. "Content and conduct-related risks"</p> <p>15 refers to the possibility of certain illegal,</p> <p>16 dangerous, or otherwise harmful content or</p> <p>17 behavior, including risks to human rights, which</p> <p>18 are prohibited by relevant policies and Terms of</p> <p>19 Service. References to risks shall be understood</p> <p>20 to refer to content and conduct-related risks."</p> <p>21 That is what the last -- the document says</p> <p>22 at the last paragraph; correct?</p> <p>23</p> <p>24</p> <p>25</p>	<p>24</p> <p>1 meet the definition of content and</p> <p>2 conduct-related risks.</p> <p>3 BY MR. LYLE:</p> <p>4 Q. Okay. Which -- which kind of risk</p> <p>5 is considered most serious by the framework, the</p> <p>6 content-related or the conduct-related?</p> <p>7 MR. DISHER: Objection. Form.</p> <p>8 THE WITNESS: Neither.</p> <p>9 BY MR. LYLE:</p> <p>10 Q. Neither. So they are considered</p> <p>11 equally serious?</p> <p>12 A. The practices are agnostic as to the</p> <p>13 nature of the content at issue.</p> <p>14 Q. What about the conduct-related</p> <p>15 risks?</p> <p>16 A. Similarly.</p> <p>17 Q. They are distinct forms of risks;</p> <p>18 correct?</p> <p>19 A. No, no. Because there can be</p> <p>20 conduct which generates content. It's best to</p> <p>21 consider the two as overlapping circles in the Venn</p> <p>22 diagram. There is some content that is strictly</p> <p>23</p> <p>24</p> <p>25</p>
<p>23</p> <p>1 A. The document says that, yes.</p> <p>2 Q. So is the interpretation correct</p> <p>3 that under these -- under this best practices</p> <p>4 framework, in order to be considered a content and</p> <p>5 conduct-related risk, it must be prohibited by the</p> <p>6 relevant policies and Terms of Service of the</p> <p>7 organization in question?</p> <p>8 MR. DISHER: Objection. Form.</p> <p>9 THE WITNESS: Define "organization</p> <p>10 in question."</p> <p>11 BY MR. LYLE:</p> <p>12 Q. "Prohibited by relevant policies and</p> <p>13 Terms of Service." So, for example, if -- if</p> <p>14 Facebook did not prohibit content X in its policies</p> <p>15 and Terms of Service, that would not be considered</p> <p>16 a content or conduct-related risk under the</p> <p>17 framework; correct?</p> <p>18 MR. DISHER: Objection. Form.</p> <p>19 THE WITNESS: I believe -- I</p> <p>20 believe that content that does not --</p> <p>21 that is not prohibited by relevant</p> <p>22 policies and Terms of Service would not</p> <p>23</p> <p>24</p> <p>25</p>	<p>25</p> <p>1 content. There is conduct that will produce</p> <p>2 content. But there is also conduct which does not</p> <p>3 necessarily have any associated content with it</p> <p>4 that can constitute a risk.</p> <p>5 Q. And is there content that doesn't</p> <p>6 have any associated conduct with it that can</p> <p>7 constitute a risk?</p> <p>8 A. At least in theory. If you assume</p> <p>9 away that -- the conduct of posting the content.</p> <p>10 Q. Okay. Where they -- where these</p> <p>11 risks are distinct in the Venn diagram, is one more</p> <p>12 resource-intensive for dealing with than the other?</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: That's going to vary</p> <p>15 by company and by the nature of the</p> <p>16 product.</p> <p>17 BY MR. LYLE:</p> <p>18 Q. So Facebook, for example.</p> <p>19 MR. DISHER: Same objection.</p> <p>20 THE WITNESS: Facebook isn't a</p> <p>21 product. Facebook has multiple products.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">26</p> <p>1 BY MR. LYLE:</p> <p>2 Q. So the -- Facebook's what we think</p> <p>3 of as a social networking site?</p> <p>4 MR. DISHER: Same objection.</p> <p>5 THE WITNESS: Even within</p> <p>6 Facebook's -- the blue website, I imagine</p> <p>7 that Facebook would construe different</p> <p>8 parts of the site to be separate</p> <p>9 products.</p> <p>10 Having said that, based on my</p> <p>11 knowledge of trust and safety practices</p> <p>12 across the industry, which are not</p> <p>13 specific to any one company, I don't</p> <p>14 believe that trust and safety policies</p> <p>15 are constructed distinctly around content</p> <p>16 in one bucket and conduct in another.</p> <p>17 BY MR. LYLE:</p> <p>18 Q. Okay.</p> <p>19 (Discussion held off the</p> <p>20 record.)</p> <p>21 BY MR. LYLE:</p> <p>22 Q. Who is Alex Feerst, F-e-e-r-s-t?</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">28</p> <p>1 partnership attempts to do.</p> <p>2 BY MR. LYLE:</p> <p>3 Q. So why does the partnership shy away</p> <p>4 from having an industry-wide definition of hate</p> <p>5 speech or misinformation?</p> <p>6 MR. DISHER: Objection. Form.</p> <p>7 THE WITNESS: I don't agree with</p> <p>8 the notion that it shies away from</p> <p>9 anything. But if you're asking does it</p> <p>10 have such a definition, the answer is no.</p> <p>11 BY MR. LYLE:</p> <p>12 Q. Is it planning to create such a</p> <p>13 definition?</p> <p>14 A. As a member of the board of the</p> <p>15 organization, I cannot speak for the entire entity,</p> <p>16 but it is my understanding that such a definition</p> <p>17 is not planned and would not be consistent with the</p> <p>18 mission of the organization.</p> <p>19 Q. Would the organization want such a</p> <p>20 definition?</p> <p>21 MR. DISHER: Objection. Form.</p> <p>22 THE WITNESS: I'm not sure I can</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">27</p> <p>1 A. Alex Feerst is a lawyer with</p> <p>2 expertise in this area who consulted for the</p> <p>3 Digital Trust &amp; Safety Partnership at and beyond</p> <p>4 its incubation.</p> <p>5 Q. Was he consulting when you were</p> <p>6 working on the Digital Trust &amp; Safety Partnership?</p> <p>7 A. Yes.</p> <p>8 Q. Did you work with him personally?</p> <p>9 A. Yes.</p> <p>10 Q. What did he mean -- and I'm trying</p> <p>11 to pull the exhibit for you, but I'm having</p> <p>12 difficulty because the Bates number seems to have</p> <p>13 been cut off.</p> <p>14 When he says that the partnership was not</p> <p>15 aiming to create an industry-wide definition of</p> <p>16 hate speech or misinformation, but to define the</p> <p>17 internal processes companies should use to develop</p> <p>18 their own policies, is that a fair characterization</p> <p>19 of the partnership?</p> <p>20 MR. DISHER: Objection to form.</p> <p>21 THE WITNESS: I would say that's a</p> <p>22 fair characterization of what the</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">29</p> <p>1 speak to what the organization would</p> <p>2 want, but DTSP has been clear that its</p> <p>3 practices are content-agnostic and seek</p> <p>4 to identify practices and processes, not</p> <p>5 content-specific rules.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. So these processes would be for</p> <p>8 individual companies to define on their own what</p> <p>9 constituted hate speech or misinformation?</p> <p>10 A. No.</p> <p>11 Q. Would it be consistent with the</p> <p>12 partnership in this regard that what YouTube</p> <p>13 considered hate speech or misinformation was</p> <p>14 different from what Facebook considered hate speech</p> <p>15 or misinformation?</p> <p>16 MR. DISHER: Objection. Form.</p> <p>17 THE WITNESS: I don't know that it</p> <p>18 would be consistent or inconsistent, but</p> <p>19 the practices admit for the -- the</p> <p>20 possibility that companies can and will</p> <p>21 adopt different rules around what content</p> <p>22 and conduct their products -- is</p> <p>23</p> <p>24</p> <p>25</p>

<p>30</p> <p>1 permitted on their products.</p> <p>2 BY MR. LYLE:</p> <p>3 Q. So that the quote continues, "The</p> <p>4 goal is that there should be sufficient flexibility</p> <p>5 such that the different companies can have</p> <p>6 different substantive definitions of these things</p> <p>7 and still agree on whether you have a set of</p> <p>8 institutional practices that are addressing them."</p> <p>9 And I'm going to hand you that marked as</p> <p>10 Exhibit 3.</p> <p>11 (Exhibit 3, HB 20, was</p> <p>12 marked for identification.)</p> <p>13 MR. DISHER: Do you know what --</p> <p>14 what pages these are of tab 15?</p> <p>15 MR. LYLE: It should be 122 to</p> <p>16 123, if -- do you have them there at the</p> <p>17 bottom, the Bates number?</p> <p>18 MR. DISHER: No, they're cut off.</p> <p>19 I think I found it.</p> <p>20 Okay. I got it.</p> <p>21 MR. LYLE: Okay.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>32</p> <p>1 BY MR. LYLE:</p> <p>2 Q. I just want to be clear. So one</p> <p>3 company in the partnership and another company in</p> <p>4 the partnership could have different substantive</p> <p>5 definitions of hate speech and misinformation, and</p> <p>6 this would be consistent with the best practices</p> <p>7 under the partnership?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Do you personally believe</p> <p>10 that hate speech can be objectively defined?</p> <p>11 MR. DISHER: Objection. Form.</p> <p>12 THE WITNESS: I don't believe</p> <p>13 that's within the scope of my</p> <p>14 definition -- my declaration.</p> <p>15 BY MR. LYLE:</p> <p>16 Q. Are you refusing to answer the</p> <p>17 question?</p> <p>18 A. I just did.</p> <p>19 MR. DISHER: Objection. Form.</p> <p>20 And I'll instruct the witness not to</p> <p>21 answer to the extent it exceeds the scope</p> <p>22 of his declaration. You can answer, if</p> <p>23</p> <p>24</p> <p>25</p>
<p>31</p> <p>1 BY MR. LYLE:</p> <p>2 Q. So does that -- is it an accurate</p> <p>3 characterization of that quote I just read you that</p> <p>4 individual companies that are members of the</p> <p>5 partnership can, under the guidelines, have</p> <p>6 different substantive definitions of hate speech</p> <p>7 and misinformation?</p> <p>8 A. Consistent with the practices,</p> <p>9 companies could and do have different approaches</p> <p>10 for those types of content.</p> <p>11 Q. Meaning misinformation and hate</p> <p>12 speech?</p> <p>13 A. Among other types of content.</p> <p>14 Q. And part of what the quote I just</p> <p>15 read you means that the different approaches</p> <p>16 include different substantive definitions?</p> <p>17 MR. DISHER: Objection. Form.</p> <p>18 THE WITNESS: The approach to the</p> <p>19 content will necessarily involve the</p> <p>20 service's definition of that content.</p> <p>21 Does that answer your question?</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>33</p> <p>1 you can. But to the extent it's not</p> <p>2 within the scope, that's outside the</p> <p>3 bounds of this deposition.</p> <p>4 THE WITNESS: For purposes of my</p> <p>5 declaration, many -- perhaps most of the</p> <p>6 companies that are CCIA members who have</p> <p>7 trust and safety practices, and including</p> <p>8 companies who are DTSP members, have</p> <p>9 working definitions of hate speech that</p> <p>10 they apply.</p> <p>11 BY MR. LYLE:</p> <p>12 Q. All right. Why is it important to</p> <p>13 the partnership that these companies be allowed</p> <p>14 flexibility in creating their own definitions of</p> <p>15 hate speech?</p> <p>16 A. Definitions of hate speech are</p> <p>17 not -- it's not specific to definitions of one</p> <p>18 particular type of content.</p> <p>19 Q. But it includes hate speech?</p> <p>20 A. It includes it, yes. And that is</p> <p>21 because their size varies, the nature of their</p> <p>22 products vary, and the nature of their communities</p> <p>23</p> <p>24</p> <p>25</p>

<p>34</p> <p>1 vary. The resources they have to deliver their 2 services and devote attention to trust and safety 3 varies. 4 Q. So the size of a company can 5 determine whether or not something is hate speech? 6 MR. DISHER: Objection. Form. 7 THE WITNESS: No. No. The answer 8 was no. 9 BY MR. LYLE: 10 Q. But didn't you just say that's why 11 the companies should be able to have different 12 definitions of things like hate speech? 13 MR. DISHER: Objection. Form. 14 THE WITNESS: Practices do not 15 control what companies are able to do. 16 Companies have committed to the practices 17 as a way of demonstrating and documenting 18 how their trust and safety operations 19 work. They are voluntary. They do not 20 constrain a company's actions other than 21 to the extent the company wants to ensure 22 it's compliant with the practices. 23 24 25</p>	<p>36</p> <p>1 A. The internal scoping assessments are 2 projected to be completed next year, early next 3 year. The third-party assessment is hoped to be 4 completed in 2022 or 2023. 5 Q. And who -- who will be the third 6 party conducting the assessment? 7 A. It has yet to be determined, other 8 than that this partnership has specified that it 9 would be an independent third-party expert 10 organization or entity in the assurance sector. 11 Q. And is it envisaged to release the 12 results of that third-party assessment to the 13 public? 14 A. The practices contemplate various 15 measures of transparency. What the work product of 16 the third-party assessor is going to be is yet to 17 be determined, so I can't speak to whether it's 18 going to be released. I don't know what the work 19 product will be. 20 Q. What about the self-reporting? 21 A. The companies are working towards 22 determining what of their internal assessments can 23 24 25</p>
<p>35</p> <p>1 BY MR. LYLE: 2 Q. These -- these are best practices; 3 right? 4 A. These are what the DTSP participants 5 assessed to be best practices at the time of the 6 drafting. 7 Q. And does that mean they are, in some 8 sense, aspirational? 9 A. The practices may be aspirational 10 for some companies. They are implemented by 11 others. 12 Q. Which ones actually implement them? 13 MR. DISHER: Objection. Form. 14 THE WITNESS: That will -- that is 15 what the ongoing assessment process is 16 designed to assess, to determine. 17 BY MR. LYLE: 18 Q. And has it yielded up any results as 19 of now? 20 A. The process is still ongoing. 21 Q. Is there a prediction of when it 22 will be completed? 23 24 25</p>	<p>37</p> <p>1 be made public, separate from their existing 2 transparency reports which are, of course, already 3 public. 4 Q. And what -- is there any schedule 5 contemplated for releasing this stuff in the 6 future? I mean, is it -- like, is there going to 7 be a cycle for releasing it or -- 8 MR. DISHER: Objection. Form. 9 THE WITNESS: I don't have any 10 further information beyond what I've 11 already told you. 12 BY MR. LYLE: 13 Q. Which of your members do you contend 14 are covered by HB20? 15 MR. DISHER: Objection. Form. 16 THE WITNESS: All the companies 17 that fall within the definition in 18 Section 120. 19 BY MR. LYLE: 20 Q. Can you name some examples? 21 MR. DISHER: Objection. Form. 22 THE WITNESS: I believe my 23 24 25</p>

<p>38</p> <p>1 declaration is clear that at least some</p> <p>2 CCIA members would fall within the</p> <p>3 definition.</p> <p>4 BY MR. LYLE:</p> <p>5 Q. Can we turn to page -- paragraph 5</p> <p>6 of your declaration, please.</p> <p>7 A. (Witness complies with request.)</p> <p>8 Page 5 or paragraph 5?</p> <p>9 Q. Paragraph 5.</p> <p>10 So you list there some of them. You list</p> <p>11 what CCIA's membership includes?</p> <p>12 A. That's correct.</p> <p>13 Q. Is that an exhaustive list?</p> <p>14 A. It was at the time this was drafted.</p> <p>15 Q. Who has been added since then?</p> <p>16 A. I don't believe there are any</p> <p>17 companies that have been added since this list was</p> <p>18 drafted.</p> <p>19 Q. And which -- which of the -- which</p> <p>20 of the entities in paragraph 5 do you contend are</p> <p>21 covered by HB20?</p> <p>22 MR. DISHER: Objection. Form.</p> <p>23</p> <p>24</p> <p>25</p>	<p>40</p> <p>1 BY MR. LYLE:</p> <p>2 Q. Okay. So are you -- are you unable</p> <p>3 to give us the precise selection of the companies</p> <p>4 in Paragraph 5 that you contend are covered by</p> <p>5 HB20?</p> <p>6 MR. DISHER: Objection. Form.</p> <p>7 THE WITNESS: Sitting here today,</p> <p>8 I cannot tell you what the monthly active</p> <p>9 users were of all 29 companies the month</p> <p>10 that we filed the Complaint.</p> <p>11 BY MR. LYLE:</p> <p>12 Q. So is HB20 based solely on the</p> <p>13 number of users?</p> <p>14 A. No.</p> <p>15 MR. DISHER: Objection. Form. Go</p> <p>16 ahead.</p> <p>17 THE WITNESS: No, but it is one of</p> <p>18 the elements in the definition.</p> <p>19 BY MR. LYLE:</p> <p>20 Q. So I just want to be clear. Are you</p> <p>21 refusing to answer the question as to which of the</p> <p>22 entities listed in Paragraph 5 are covered in your</p> <p>23</p> <p>24</p> <p>25</p>
<p>39</p> <p>1 THE WITNESS: At least -- well,</p> <p>2 let me take a step back. The definition</p> <p>3 in HB20 contemplates monthly active</p> <p>4 users, which we don't know until the end</p> <p>5 of the month. So in any given month, any</p> <p>6 of these companies may arise to a user</p> <p>7 base that could trigger this statute, but</p> <p>8 we won't know until that data has been</p> <p>9 collected.</p> <p>10 But I believe my declaration is</p> <p>11 clear that at least some of these</p> <p>12 companies' products are covered,</p> <p>13 including, for example, Facebook and</p> <p>14 Google.</p> <p>15 BY MR. LYLE:</p> <p>16 Q. When you -- the month before you</p> <p>17 filed the lawsuit, which of these members do you</p> <p>18 contend were covered by HB20?</p> <p>19 MR. DISHER: Objection. Form.</p> <p>20 THE WITNESS: I don't have that</p> <p>21 information before me, but at least some</p> <p>22 of them met the statutory definition.</p> <p>23</p> <p>24</p> <p>25</p>	<p>41</p> <p>1 contention by HB20?</p> <p>2 MR. DISHER: Hold on. He did not</p> <p>3 refuse to answer the question. He did</p> <p>4 answer the question, so I will object to</p> <p>5 form. And I will also object to your</p> <p>6 mischaracterization of his answer.</p> <p>7 Go ahead and answer, if you can.</p> <p>8 THE WITNESS: I have already</p> <p>9 answered this question to say that at</p> <p>10 least Facebook and Google are covered by</p> <p>11 this statute, and other companies may</p> <p>12 have met and may continue to meet the</p> <p>13 definitions of the statute.</p> <p>14 BY MR. LYLE:</p> <p>15 Q. So you're saying that all members</p> <p>16 could potentially be covered by HB20?</p> <p>17 A. If they meet the definition in</p> <p>18 Section 120.</p> <p>19 Q. When was the last time you had</p> <p>20 knowledge of the monthly usership sufficient for</p> <p>21 you to know who fell under HB20 and who didn't?</p> <p>22 MR. DISHER: Objection. Form.</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">42</p> <p>1 THE WITNESS: I don't recall.</p> <p>2 BY MR. LYLE:</p> <p>3 Q. At any point in time, have you known</p> <p>4 which of your members fall under HB20?</p> <p>5 MR. DISHER: Objection. Form.</p> <p>6 THE WITNESS: I know now that some</p> <p>7 of my members fall under HB20.</p> <p>8 BY MR. LYLE:</p> <p>9 Q. Have you ever known, like, precisely</p> <p>10 which ones fall under HB20?</p> <p>11 MR. DISHER: Objection. Form. Go</p> <p>12 ahead.</p> <p>13 THE WITNESS: I just identified</p> <p>14 precisely that some members fall under</p> <p>15 HB20. Are you asking me do I know at any</p> <p>16 moment in time each individual company</p> <p>17 and whether or not they are covered?</p> <p>18 BY MR. LYLE:</p> <p>19 Q. Has there ever been a point in time</p> <p>20 in which you knew which of your members would fall</p> <p>21 under HB20?</p> <p>22 MR. DISHER: Objection. Form.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">44</p> <p>1 BY MR. LYLE:</p> <p>2 Q. Is CCIA seeking relief in this suit</p> <p>3 on behalf of all its members?</p> <p>4 MR. DISHER: Objection. Form.</p> <p>5 THE WITNESS: The association is</p> <p>6 seeking relief on behalf of all the</p> <p>7 members who are subject to the statute.</p> <p>8 BY MR. LYLE:</p> <p>9 Q. And who is that?</p> <p>10 MR. DISHER: Objection. Form.</p> <p>11 THE WITNESS: All of the companies</p> <p>12 that fall within the definition in</p> <p>13 Section 120.</p> <p>14 BY MR. LYLE:</p> <p>15 Q. But you've declined to give us a</p> <p>16 list of that.</p> <p>17 MR. DISHER: Objection. Form.</p> <p>18 THE WITNESS: I disagree.</p> <p>19 MR. DISHER: Hold on. He has not</p> <p>20 declined to do -- to answer any of your</p> <p>21 questions. I just want to be clear that</p> <p>22 he has not declined to answer any of your</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">43</p> <p>1 THE WITNESS: I know now that some</p> <p>2 of my members fall under the bill.</p> <p>3 BY MR. LYLE:</p> <p>4 Q. I'm asking for an exhaustive list,</p> <p>5 if you've ever had an exhaustive list.</p> <p>6 MR. DISHER: Hold on. Is that the</p> <p>7 question?</p> <p>8 MR. LYLE: Yes.</p> <p>9 MR. DISHER: Objection to form.</p> <p>10 THE WITNESS: I do not believe</p> <p>11 that an exhaustive list of all the</p> <p>12 companies potentially within the</p> <p>13 definition of the statute has ever been</p> <p>14 compiled.</p> <p>15 BY MR. LYLE:</p> <p>16 Q. And have you ever just known that?</p> <p>17 MR. DISHER: Objection. Form.</p> <p>18 THE WITNESS: I have never at any</p> <p>19 moment in time known the monthly active</p> <p>20 users of all my members at that moment,</p> <p>21 no.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">45</p> <p>1 questions other than those related to</p> <p>2 privilege that we talked about earlier.</p> <p>3 THE WITNESS: I have identified --</p> <p>4 I have listed for you companies that fall</p> <p>5 within the scope of the statute.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. I'm asking for a specific list, not</p> <p>8 a partial list. Can you give a specific list?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: I believe</p> <p>11 identifying Facebook and Google, among</p> <p>12 others, depending on their monthly active</p> <p>13 users, constitutes a specific list. It</p> <p>14 may not be an exhaustive list. I do not</p> <p>15 have an exhaustive list.</p> <p>16 BY MR. LYLE:</p> <p>17 Q. So you're unable to give an</p> <p>18 exhaustive list?</p> <p>19 MR. DISHER: Objection. Form.</p> <p>20 THE WITNESS: With the right -- I</p> <p>21 am unable at this very moment to provide</p> <p>22 an exhaustive list.</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">46</p> <p>1 BY MR. LYLE:</p> <p>2 Q. Okay. Have you talked to any of</p> <p>3 your members about this lawsuit?</p> <p>4 A. Yes.</p> <p>5 Q. Who have you talked to?</p> <p>6 A. I've communicated with all our</p> <p>7 members about the lawsuit.</p> <p>8 Q. Each one?</p> <p>9 A. Yes.</p> <p>10 Q. How many of them are supportive of</p> <p>11 this lawsuit?</p> <p>12 A. I am not aware of any company that</p> <p>13 does not support the lawsuit. If you're asking if</p> <p>14 I took a straw poll, the answer is no.</p> <p>15 Q. So it's your testimony that none of</p> <p>16 your members are opposed to the lawsuit?</p> <p>17 A. No, that's not my testimony.</p> <p>18 Q. So you're unaware of any that do not</p> <p>19 support it, you said?</p> <p>20 A. That's correct.</p> <p>21 Q. Doesn't that mean that you're</p> <p>22 unaware of any who oppose it?</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">48</p> <p>1 THE WITNESS: To my knowledge, no</p> <p>2 company has -- I do not specifically</p> <p>3 recall whether or not any companies may</p> <p>4 have expressed the view that they are not</p> <p>5 covered.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. Do you know why none of your</p> <p>8 plaintiffs filed -- or none of your members filed</p> <p>9 suit individually in this lawsuit?</p> <p>10 MR. DISHER: Objection. Form.</p> <p>11 THE WITNESS: I'm not privy to the</p> <p>12 legal decision-making of all our member</p> <p>13 companies.</p> <p>14 BY MR. LYLE:</p> <p>15 Q. Were there any discussions about</p> <p>16 that?</p> <p>17 MR. DISHER: Objection. Form. I</p> <p>18 will also object and instruct the witness</p> <p>19 not to answer to the extent -- and I</p> <p>20 don't know if those conversations might</p> <p>21 be covered by some type of joint defense</p> <p>22 or common interest agreement, which would</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">47</p> <p>1 MR. DISHER: Objection. Form.</p> <p>2 THE WITNESS: No, because they</p> <p>3 could neither oppose nor support but have</p> <p>4 no position on it, and they wouldn't fall</p> <p>5 into either group.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. Are you aware of any members who are</p> <p>8 opposed to the lawsuit?</p> <p>9 A. None of my members have expressed</p> <p>10 opposition to the lawsuit to me.</p> <p>11 Q. Has it come to your awareness in any</p> <p>12 other way?</p> <p>13 A. No.</p> <p>14 Q. Have any of the members expressed</p> <p>15 opposition to not you personally but your</p> <p>16 organization?</p> <p>17 MR. DISHER: Objection. Form.</p> <p>18 THE WITNESS: Not to my knowledge.</p> <p>19 BY MR. LYLE:</p> <p>20 Q. Have any of them expressed that</p> <p>21 they're not covered by HB20?</p> <p>22 MR. DISHER: Objection. Form.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">49</p> <p>1 be privileged if it was related to legal</p> <p>2 decision-making.</p> <p>3 But subject to that instruction,</p> <p>4 you can answer if none of those</p> <p>5 conversations would fall under a joint</p> <p>6 defense or common interest agreement.</p> <p>7 BY MR. LYLE:</p> <p>8 Q. None of them are defendants;</p> <p>9 correct?</p> <p>10 MR. DISHER: I gave him the</p> <p>11 instruction. He can answer if he can.</p> <p>12 THE WITNESS: Based on that</p> <p>13 instruction, I don't have much to tell</p> <p>14 you.</p> <p>15 BY MR. LYLE:</p> <p>16 Q. Are you -- are any of your members</p> <p>17 defendants in this lawsuit?</p> <p>18 A. No.</p> <p>19 Q. Do they have any common interest</p> <p>20 agreements from CCIA?</p> <p>21 A. There are common interest agreements</p> <p>22 in place between the association and the other</p> <p>23</p> <p>24</p> <p>25</p>

<p>50</p> <p>1 parties involved in the litigation, including</p> <p>2 member.</p> <p>3 Q. Which member?</p> <p>4 MR. DISHER: You can answer which</p> <p>5 members.</p> <p>6 THE WITNESS: We have common</p> <p>7 interest agreements with Google,</p> <p>8 Facebook, Amazon, Pinterest. NetChoice,</p> <p>9 who is not a member. And possibly some</p> <p>10 others. I'd have to check.</p> <p>11 BY MR. LYLE:</p> <p>12 Q. What about Twitter?</p> <p>13 A. Off the top of my head, I'm not</p> <p>14 certain whether such an agreement exists.</p> <p>15 Q. How does one create a user profile</p> <p>16 on Facebook?</p> <p>17 A. Which product?</p> <p>18 Q. I think you were referring to it as</p> <p>19 the blue site earlier. The one that one thinks of</p> <p>20 when one's making a Facebook profile.</p> <p>21 A. Facebook.com. I have not done this</p> <p>22 in many years, and so the process may have changed,</p> <p>23</p> <p>24</p> <p>25</p>	<p>52</p> <p>1 Facebook accounts, Facebook.com accounts.</p> <p>2 BY MR. LYLE:</p> <p>3 Q. Who are those?</p> <p>4 A. I believe that includes children, by</p> <p>5 which I mean those under the age of 13.</p> <p>6 I believe that includes convicted sex</p> <p>7 offenders. It may include people in jurisdictions</p> <p>8 where the product is not offered, as well as other</p> <p>9 categories that I'm not privy to off the top of my</p> <p>10 head.</p> <p>11 Q. So how does -- how does Facebook</p> <p>12 keep children from opening accounts?</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: I am not a member of</p> <p>15 the Facebook trust and safety team. And</p> <p>16 so my knowledge on this is generally</p> <p>17 limited to industry practice. But there</p> <p>18 are a variety of software-driven and</p> <p>19 human-driven tools that are used to</p> <p>20 identify accounts that may violate the</p> <p>21 Terms of Service.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>51</p> <p>1 but, generally speaking, one navigates to the</p> <p>2 website or through the mobile app, creates an</p> <p>3 account, reviews the relevant policies and</p> <p>4 practices that you are required to review prior to</p> <p>5 creating the account.</p> <p>6 You check that you have reviewed and agree</p> <p>7 with those practices. Hit "I accept," provide</p> <p>8 whatever information they may ask, such as a mobile</p> <p>9 number, if you're using it. And proceed with what</p> <p>10 they're asking for.</p> <p>11 Now, as I said, it's been many years since</p> <p>12 I've done this, so I'm not steeped in the internal</p> <p>13 workflow.</p> <p>14 Q. And in your understanding, can</p> <p>15 anybody do that?</p> <p>16 MR. DISHER: Objection. Form.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MR. LYLE:</p> <p>19 Q. Who can't?</p> <p>20 MR. DISHER: Same objection.</p> <p>21 THE WITNESS: There are many</p> <p>22 groups of people who are not eligible for</p> <p>23</p> <p>24</p> <p>25</p>	<p>53</p> <p>1 BY MR. LYLE:</p> <p>2 Q. And, in general, from the industry</p> <p>3 practice standpoint you spoke of, are these tools</p> <p>4 implemented on the front end, like an account</p> <p>5 creation, or do they come after the creation of the</p> <p>6 account?</p> <p>7 A. At creation, most require</p> <p>8 individuals to certify that they are of age, if the</p> <p>9 age-gating is occurring. Some services also</p> <p>10 utilize age verification technology. I could not</p> <p>11 tell you whether Facebook uses age verification</p> <p>12 technology in any of its products in any of the</p> <p>13 jurisdictions where it operates.</p> <p>14 Q. As opposed to self-certification?</p> <p>15 A. For the -- well, wait a minute.</p> <p>16 Those -- those aren't exclusive. One could do</p> <p>17 both. But -- have I answered your question?</p> <p>18 Q. Let me rephrase it. To your --</p> <p>19 which of your members use exclusively</p> <p>20 self-certification for creating accounts?</p> <p>21 A. I am not steeped in the individual</p> <p>22 workflows of our company's trust and safety</p> <p>23</p> <p>24</p> <p>25</p>

<p>54</p> <p>1 practices. So I cannot tell you off the top of my 2 head. 3 Q. Do you know which of your members 4 use a certification that is independent of 5 self-certification at the creation of accounts? 6 A. Like an age verification technology? 7 Q. Yes. 8 A. I could not point you to a 9 particular company presently using age verification 10 technology. 11 Q. What about the technologies to 12 prevent sex offenders from creating accounts, which 13 of your members are using verification technologies 14 beyond self-certification for that? 15 MR. DISHER: Objection. Form. 16 THE WITNESS: I have to give you 17 the same answer that I did with respect 18 to child protection, which is I'm not 19 privy to the specific internal practices 20 of all the companies' trust and safety 21 operations. 22 23 24 25</p>	<p>56</p> <p>1 A. Yes. I have no idea. 2 Q. What about YouTube? 3 A. I do not know the current users. 4 Q. What about Twitter? 5 A. I do not know. 6 Q. Do you know anything about the 7 demographics of the users of those companies? 8 MR. DISHER: Objection. Form. 9 THE WITNESS: I have general 10 knowledge about the demographics of all 11 of the companies' user base, yes. 12 BY MR. LYLE: 13 Q. Do they include children? 14 MR. DISHER: Objection. Form. 15 THE WITNESS: Some products are 16 available to children, yes. 17 BY MR. LYLE: 18 Q. Which ones? 19 A. YouTube has a kids-focused product. 20 Q. Now, are the YouTube products that 21 are not explicitly kid-focused, are those 22 accessible to children? 23 24 25</p>
<p>55</p> <p>1 BY MR. LYLE: 2 Q. Are you aware that some use 3 something other than self-certification? 4 A. It is my understanding that 5 companies -- many companies' trust and safety 6 practices involve screening users for that group 7 and terminating accounts accordingly. 8 Q. And are you aware of ones that do 9 that at the moment of account creation? 10 A. I could not point you to a specific 11 company that does -- that I know to do that at 12 account creation. 13 Q. Let's turn to paragraph 9 of your 14 declaration, please. 15 A. (Witness complies with request.) 16 Q. How many users do -- does Facebook 17 have? 18 MR. DISHER: Objection. Form. 19 THE WITNESS: I mean, even if that 20 question were specific as to a product -- 21 BY MR. LYLE: 22 Q. The blue site. 23 24 25</p>	<p>57</p> <p>1 MR. DISHER: Objection. Form. 2 THE WITNESS: Define "accessible." 3 BY MR. LYLE: 4 Q. Could a child create an account 5 online? 6 MR. DISHER: Objection. Form. 7 THE WITNESS: Could a child create 8 an account on YouTube? 9 BY MR. LYLE: 10 Q. Yeah, the nonkids' site. 11 A. Are they capable of creating the 12 account or is -- do the Terms of Service permit the 13 account? 14 Q. Capable. 15 MR. DISHER: Objection. Form. 16 THE WITNESS: Certainly anybody, 17 even someone who -- to who -- to whom the 18 rules prohibit access is capable of 19 filling out the form. Now, is the 20 account terminated after -- you know, 21 immediately after creation or soon 22 thereafter? You know, perhaps so. 23 24 25</p>

<p>58</p> <p>1 BY MR. LYLE:</p> <p>2 Q. What about -- is that the same for</p> <p>3 Twitter?</p> <p>4 MR. DISHER: Objection. Form.</p> <p>5 THE WITNESS: I do not know</p> <p>6 Twitter's Terms of Service off the top of</p> <p>7 my head.</p> <p>8 BY MR. LYLE:</p> <p>9 Q. But in terms of it being accessible</p> <p>10 to somebody who is prohibited by the Terms of</p> <p>11 Service creating an account?</p> <p>12 A. Are we still --</p> <p>13 MR. DISHER: Objection --</p> <p>14 objection to form.</p> <p>15 THE WITNESS: Sorry.</p> <p>16 Are we still using the same</p> <p>17 definition of "accessible"?</p> <p>18 BY MR. LYLE:</p> <p>19 Q. Yes, possible to create an account.</p> <p>20 MR. DISHER: Objection. Form.</p> <p>21 THE WITNESS: It is possible.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>60</p> <p>1 BY MR. LYLE:</p> <p>2 Q. Let's go to Paragraph 9, please, of</p> <p>3 your declaration.</p> <p>4 A. (Witness complies with request.)</p> <p>5 Q. You write here that the scale of</p> <p>6 users and activity on your members' services is</p> <p>7 significant. And you provide some numbers. You</p> <p>8 say Facebook and YouTube each has over 2 billion</p> <p>9 users. Every day, users watch over a billion hours</p> <p>10 of video. That and the other things in this</p> <p>11 paragraph, do you have personal knowledge of this?</p> <p>12 MR. DISHER: Objection. Form.</p> <p>13 THE WITNESS: I'm generally aware</p> <p>14 of these facts and that -- no. No, I</p> <p>15 don't have personal knowledge.</p> <p>16 BY MR. LYLE:</p> <p>17 Q. So what is the source of your</p> <p>18 knowledge of these?</p> <p>19 A. There are reports made by the</p> <p>20 companies or -- yeah, or media accounts of those</p> <p>21 reports.</p> <p>22 MR. DISHER: Can we take a</p> <p>23</p> <p>24</p> <p>25</p>
<p>59</p> <p>1 BY MR. LYLE:</p> <p>2 Q. What about Facebook?</p> <p>3 MR. DISHER: Objection. Form.</p> <p>4 THE WITNESS: Again, it is</p> <p>5 possible.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. Are you aware of any benefits that</p> <p>8 your members have gotten from the federal</p> <p>9 government?</p> <p>10 MR. DISHER: Objection. Form.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. LYLE:</p> <p>13 Q. Are you aware of any subsidies your</p> <p>14 members have gotten from the federal government?</p> <p>15 A. I'm not aware.</p> <p>16 Q. Do you consider Section 230 of the</p> <p>17 Communications Decency Act to be a benefit that</p> <p>18 your members have gotten from the government?</p> <p>19 MR. DISHER: Objection. Form.</p> <p>20 THE WITNESS: No.</p> <p>21 (Discussion held off the</p> <p>22 record.)</p> <p>23</p> <p>24</p> <p>25</p>	<p>61</p> <p>1 10-minute break?</p> <p>2 MR. LYLE: Yes.</p> <p>3 THE VIDEOGRAPHER: We're going off</p> <p>4 the record. This is the end of media</p> <p>5 Unit No. 1. The time is 3:27 p.m.</p> <p>6 (Recess)</p> <p>7 THE VIDEOGRAPHER: We're back on</p> <p>8 the record. This is the beginning of</p> <p>9 media Unit No. 2. The time is 3:41 p.m.</p> <p>10 BY MR. LYLE:</p> <p>11 Q. All right. Let's -- let's go to 10A</p> <p>12 of your declaration. Let's go to 10A,</p> <p>13 Mr. Schruers, of your declaration.</p> <p>14 A. It's "Shears," like the utensil.</p> <p>15 Q. Schruers. Sorry. Mr. Schruers.</p> <p>16 10A.</p> <p>17 You talk about how "when the COVID-19</p> <p>18 pandemic struck, many small businesses turned to</p> <p>19 social media services and online schools to</p> <p>20 continue operations, engage current and prospective</p> <p>21 customers, and cultivate loyalty in a</p> <p>22 socially-distant context. Many small businesses</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">62</p> <p>1 who succeeded in the shuttered economy did so by  2 embracing social media services and digital tools."  3 Now, were any of your members providing the  4 services and tools you describe in that paragraph?  5 A. Some, yes.  6 Q. Which ones?  7 A. The -- if you were to look at this  8 post here that's linked to, I believe it discusses  9 services, including -- in footnote 12, services  10 including Twitter, Facebook, Google, Maps in  11 particular, as well as a variety of other services  12 which are not offered by association members but  13 are also digital.  14 Q. And is that a result of your own  15 personal knowledge or having read the post that you  16 cite to?  17 MR. DISHER: Objection. Form.  18 THE WITNESS: The answer to that  19 question is based on my direct  20 observation of companies offering  21 services that were being used by  22 individuals to do this.  23  24  25</p>	<p style="text-align: right;">64</p> <p>1 Q. How exactly?  2 A. I have observed these products being  3 used in my work, as well as being aware of public  4 accounts of them. I have observed family and  5 friends utilizing products as described in this  6 context. So I have what I consider to be personal  7 knowledge that this is correct.  8 Q. Have you talked to these companies  9 directly about this?  10 A. I have talked to employees at these  11 companies about the use of these services in this  12 context, yes. I should say some of these.  13 Q. Which -- which ones?  14 A. I characterize that because I don't  15 believe I've spoken with Twitter or Venmo about  16 their products.  17 Q. Let's go to 11A. You talk about the  18 extensive efforts across the industry to remove the  19 videos of the mass shootings at Christchurch.  20 A. Yes.  21 Q. Is that -- are those efforts  22 something you have personal knowledge of?  23  24  25</p>
<p style="text-align: right;">63</p> <p>1 BY MR. LYLE:  2 Q. Within your work at CCI or reading  3 articles?  4 A. No, in the scope of my work, I  5 directly observed companies offering services that  6 individuals are taking advantage of.  7 Q. How did you directly observe that?  8 A. By seeing them live online is one  9 such example. By patronizing them not in the scope  10 of my work as another example. By discussing that  11 with companies as a third example.  12 Q. Companies that include your members?  13 A. Association members, yes.  14 Q. Let's go to the next paragraph, B.  15 You talk about "amid a quarantine of indeterminate  16 length, schools and public health [sic] services  17 turned to social media tools," and you include here  18 Facebook Live as an example and remote learning via  19 Google Meet and Zoom.  20 Are these things that you have personal  21 knowledge of?  22 A. I believe so, yes.  23  24  25</p>	<p style="text-align: right;">65</p> <p>1 A. Yes.  2 MR. DISHER: Objection. Form. Go  3 ahead.  4 THE WITNESS: Yes.  5 BY MR. LYLE:  6 Q. How do you have personal knowledge  7 of that?  8 A. Having discussed these with -- these  9 efforts with the companies implementing them and  10 policymakers who were interested in them and seeing  11 the results of those efforts online.  12 Q. Are there any other bases of your  13 personal knowledge of that that you haven't  14 described?  15 A. My general knowledge derived from  16 having spent more than 15 years in this space,  17 yeah.  18 Q. Right, but I'm talking about actual  19 personal knowledge of these specific efforts with  20 respect to these particular shooting videos.  21 MR. DISHER: Objection. Form.  22 THE WITNESS: Can you restate that  23  24  25</p>

<p>66</p> <p>1 question?</p> <p>2 BY MR. LYLE:</p> <p>3 Q. So I asked you how you had personal</p> <p>4 knowledge of the efforts across the industry to</p> <p>5 remove the videos of the Christchurch shooting.</p> <p>6 A. Yes.</p> <p>7 Q. And you responded partially with an</p> <p>8 account of your 15 years in the industry. And I'm</p> <p>9 asking you, specific to this, how you have personal</p> <p>10 knowledge of the industry effort.</p> <p>11 MR. DISHER: Objection. Form.</p> <p>12 THE WITNESS: I believe the bases</p> <p>13 that I have described substantially</p> <p>14 provide my knowledge of these efforts.</p> <p>15 BY MR. LYLE:</p> <p>16 Q. I'm talking not about like reading</p> <p>17 things on the internet, but you personally in your</p> <p>18 work coming about knowledge of these efforts.</p> <p>19 MR. DISHER: Objection. Form.</p> <p>20 THE WITNESS: I am not a content</p> <p>21 moderator myself. So if your definition</p> <p>22 of "personal knowledge" means I have to</p> <p>23</p> <p>24</p> <p>25</p>	<p>68</p> <p>1 BY MR. LYLE:</p> <p>2 Q. Let's go to 10C. This is the</p> <p>3 #ClearTheList movement to help teachers clear their</p> <p>4 online wish lists from platforms like Amazon.</p> <p>5 "Social media has also enabled Texas country</p> <p>6 musicians to raise money for teachers."</p> <p>7 A. I'm sorry, which paragraph are we</p> <p>8 in?</p> <p>9 Q. 10C. What you describe there, is</p> <p>10 your knowledge from that -- of that derived from</p> <p>11 conversations with your own members?</p> <p>12 A. I do not precisely recall where my</p> <p>13 knowledge of this particular instance first arose.</p> <p>14 This is cited here because it substantiated my</p> <p>15 awareness of this particular issue.</p> <p>16 Q. Let's go to 11B. This is the dark</p> <p>17 examples of content shared on the darker side of</p> <p>18 the internet. Videos and propaganda posts by ISIS</p> <p>19 to the recruit American teenagers.</p> <p>20 A. Yes.</p> <p>21 Q. Is that something you have knowledge</p> <p>22 of from conversations with your members?</p> <p>23</p> <p>24</p> <p>25</p>
<p>67</p> <p>1 be a content moderator, well, then I</p> <p>2 don't think we have a shared</p> <p>3 understanding as to what a definition --</p> <p>4 what personal knowledge is.</p> <p>5 It is my view that based on what I</p> <p>6 have publicly and personally observed,</p> <p>7 what I have discussed with companies and</p> <p>8 policy makers and what I have witnessed</p> <p>9 online as an internet user, I have</p> <p>10 personal knowledge of these things.</p> <p>11 If we need to hammer out a shared</p> <p>12 definition of "personal knowledge," maybe</p> <p>13 you can tell me what you think "personal</p> <p>14 knowledge" is.</p> <p>15 BY MR. LYLE:</p> <p>16 Q. Have you had conversations with the</p> <p>17 individual companies about their efforts?</p> <p>18 MR. DISHER: Objection. Form.</p> <p>19 THE WITNESS: I have had</p> <p>20 conversations with employees at these</p> <p>21 companies about their efforts.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>69</p> <p>1 A. Yes, with personnel at the member</p> <p>2 companies.</p> <p>3 Q. What about C, fraud schemes that</p> <p>4 specifically target older adults online? Do you</p> <p>5 have knowledge of that from conversations with your</p> <p>6 members?</p> <p>7 A. I do not precisely recall where my</p> <p>8 knowledge of that online fraud arises from.</p> <p>9 Q. How about 11D, have you had</p> <p>10 conversations with your members about the content</p> <p>11 of that paragraph: Sexual, graphic or otherwise</p> <p>12 disturbing content?</p> <p>13 A. Yes.</p> <p>14 Q. What about 11E, content that</p> <p>15 promotes or glorifies self-harm?</p> <p>16 A. Yes.</p> <p>17 Q. That's -- do you have knowledge of</p> <p>18 that from conversations with your members?</p> <p>19 A. Yes.</p> <p>20 Q. Now, in your declaration, the</p> <p>21 paragraphs we just talked about, you cite a lot of</p> <p>22 online articles for that, for the propositions</p> <p>23</p> <p>24</p> <p>25</p>

<p>70</p> <p>1 there. Did you search for these articles yourself?</p> <p>2 A. Yes.</p> <p>3 Q. And does your knowledge expressed in</p> <p>4 your declaration primarily come from those searches</p> <p>5 and reading the articles or from conversations with</p> <p>6 your members?</p> <p>7 MR. DISHER: Objection. Form.</p> <p>8 THE WITNESS: Neither. Well,</p> <p>9 speaking broadly, neither. In many</p> <p>10 cases, it arises from my general</p> <p>11 knowledge, being in this industry and</p> <p>12 communicating with these companies over</p> <p>13 the past 15 years, since this is my area</p> <p>14 of expertise.</p> <p>15 These articles substantiate and</p> <p>16 are consistent with my understanding,</p> <p>17 provide additional information to</p> <p>18 contextualize the claims that I am</p> <p>19 putting down here that embody my general</p> <p>20 knowledge of trust and safety operations</p> <p>21 in the industry.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>72</p> <p>1 THE WITNESS: And so outside of my</p> <p>2 conversations with counsel, the answer is</p> <p>3 no.</p> <p>4 BY MR. LYLE:</p> <p>5 Q. No one helped you search for the</p> <p>6 articles?</p> <p>7 A. Outside of my conversations with</p> <p>8 counsel.</p> <p>9 Q. Let's go to paragraph 14, please.</p> <p>10 You talk about human review and the use of digital</p> <p>11 tools that rely in part on algorithms.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Could you explain that process,</p> <p>14 please.</p> <p>15 A. I can explain the process generally</p> <p>16 as it's implemented across industry. Necessarily,</p> <p>17 no one description is going to characterize a firm</p> <p>18 exactly, and not all firms will align with this.</p> <p>19 But as a general proposition, companies account for</p> <p>20 the risks that we were discussing earlier at the</p> <p>21 product design stage. They then develop governance</p> <p>22 that reflects those risks. And they, based on that</p> <p>23</p> <p>24</p> <p>25</p>
<p>71</p> <p>1 BY MR. LYLE:</p> <p>2 Q. Now, a lot of these observations</p> <p>3 refer to things that happened in the past year or</p> <p>4 two, not the last 15 years. Do you agree with</p> <p>5 that?</p> <p>6 MR. DISHER: Objection. Form.</p> <p>7 THE WITNESS: No. I mean, there</p> <p>8 are some instances here that have</p> <p>9 occurred recently. There are also</p> <p>10 phenomena that are described which occur</p> <p>11 persistently.</p> <p>12 BY MR. LYLE:</p> <p>13 Q. Did anyone help you search for these</p> <p>14 articles?</p> <p>15 A. This was drafted with assistance by</p> <p>16 in-house counsel.</p> <p>17 MR. DISHER: I'll instruct the</p> <p>18 witness not to answer to the extent it</p> <p>19 implicates any assistance you got from</p> <p>20 in-house counsel. But subject to that</p> <p>21 instruction, go ahead and answer if you</p> <p>22 can.</p> <p>23</p> <p>24</p> <p>25</p>	<p>73</p> <p>1 governance, develop a trust and safety program</p> <p>2 which, from the user perspective, involves</p> <p>3 enforcement of the product governance, which may be</p> <p>4 called Terms of Service or the end user licensing</p> <p>5 agreement or the community guidelines or any other</p> <p>6 number of names.</p> <p>7 And those policies and practices and</p> <p>8 guidelines and Terms of Service are enforced</p> <p>9 through a combination of computer-aided and</p> <p>10 human-driven decisions. Computer-aided, of course,</p> <p>11 was itself developed by people.</p> <p>12 There is then a refinement or internal</p> <p>13 evaluation mechanism that updates the three</p> <p>14 previous stages that I was describing. And then</p> <p>15 some -- many companies then report out to the</p> <p>16 public based on that. This is a constantly</p> <p>17 iterative process.</p> <p>18 Q. So perhaps an example would be --</p> <p>19 would be -- would clarify this. So you write in</p> <p>20 Paragraph 14 that Instagram has made it harder to</p> <p>21 search for graphic images involving suicide</p> <p>22 attempts and self-harm.</p> <p>23</p> <p>24</p> <p>25</p>

<p>74</p> <p>1 How, as a practical matter, have they done 2 that or would they do that?</p> <p>3 A. So that may involve downranking or 4 deprioritizing; for example, Tide POD challenge, 5 when Internet trolls encouraged children to eat 6 detergent pods. I should say young people, because 7 not all who did this were necessarily children. 8 And the results that may be displayed to users will 9 reflect both software-based deprioritization of 10 potentially dangerous results, and some of that 11 content may be moderated by humans, which is to say 12 that it's tagged or downranked or otherwise 13 classified so as not to be visible.</p> <p>14 Some services, including potentially 15 Instagram, although I can't specifically recall, 16 may go so far as to update their Terms of Service 17 to say you cannot use our service to encourage 18 others to do dangerous things, including eat 19 detergent pods.</p> <p>20 Q. And so from the standpoint of this 21 both human review and use of digital tools that you 22 referred to in Paragraph 14, how is the dangerous 23 24 25</p>	<p>76</p> <p>1 adjustments to the programming will be done by 2 members of the trust and safety team or content 3 moderators, depending on the service, to -- to -- 4 to effectuate that outcome.</p> <p>5 Q. Also in paragraph 14, you talk about 6 how it -- more frequently, content moderation 7 involves context-specific decisions about how to 8 arrange and display content, how best to recommend 9 content to users based on their interests, and how 10 easy it should be to access certain kinds of 11 content.</p> <p>12 Where in HB20 is that practice required to 13 change?</p> <p>14 MR. DISHER: Objection. Form.</p> <p>15 THE WITNESS: I believe you're 16 asking me for a legal interpretation. 17 But insofar as "detergent pods taste 18 great" is a viewpoint, and HB20 prohibits 19 companies from discriminating on the 20 basis of a viewpoint, that is one aspect 21 of the bill.</p> <p>22 What's more, the bill has 23 24 25</p>
<p>75</p> <p>1 thing, you know, perceived by the platform and then 2 deranked? As a practical matter, how does that 3 work?</p> <p>4 MR. DISHER: Objection. Form.</p> <p>5 THE WITNESS: That sounds like the 6 question I just answered.</p> <p>7 BY MR. LYLE:</p> <p>8 Q. How do algorithms play into that?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: Can we establish a 11 working definition of algorithms before I 12 proceed? Can we just say software code?</p> <p>13 BY MR. LYLE:</p> <p>14 Q. Sure.</p> <p>15 A. Okay. There will be programming in 16 the service's back end that may have various labels 17 or tags assigned to it which results in what people 18 generally refer to as deprioritization, which is to 19 say that content with those tags is less likely to 20 be surfaced, maybe only to a particular class of 21 users.</p> <p>22 But those tags and that -- those 23 24 25</p>	<p>77</p> <p>1 extensive penalties, and the risk of 2 running afoul of those penalties due to 3 the vague language in the statute may 4 deter activity that might, under an 5 interpretation, be permitted because the 6 risk is too great.</p> <p>7 And as this paragraph points out, 8 content -- the propriety of the content 9 can be highly context-dependent.</p> <p>10 BY MR. LYLE:</p> <p>11 Q. In paragraph 15, you talk about 12 age-gating. How would HB20 prohibit age-gating?</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: The statute 15 generates risks for companies 16 implementing their content moderation 17 practices. And what a company regards as 18 inappropriate for young people and is, 19 therefore, gated away from them may well 20 be considered a viewpoint.</p> <p>21 And saying this viewpoint is 22 inappropriate for young people, whether 23 24 25</p>

<p>78</p> <p>1 it's content promoting self-harm, 2 promoting the use of cannabis, 3 celebrating adult content, depictions of 4 extreme violence, all of that may 5 constitute a viewpoint against which a 6 company would be penalized for 7 discriminating under HB20. 8 BY MR. LYLE: 9 Q. How would depictions of cannabis 10 constitute a viewpoint? 11 MR. DISHER: Objection. Form. 12 THE WITNESS: Depends on the 13 context. But there are certainly some 14 depictions of cannabis that would 15 constitute a viewpoint. It may be -- it 16 may co-occur with the expression of the 17 viewpoint. 18 BY MR. LYLE: 19 Q. Can you provide an example where a 20 depiction of cannabis would constitute a viewpoint? 21 MR. DISHER: Objection. Form. 22 THE WITNESS: I'd have to 23 24 25</p>	<p>80</p> <p>1 using? 2 BY MR. LYLE: 3 Q. What about adult content? 4 A. What about it? 5 Q. Is that a viewpoint or is that a 6 content? 7 MR. DISHER: Objection. Form. 8 THE WITNESS: Under the vague 9 definitions of the statute, there is 10 undoubtedly some adult content that could 11 be construed as a viewpoint. And it may 12 co-occur with promotion of that content, 13 extolling it, saying it is a positive 14 thing. That would undoubtedly be a 15 viewpoint which could be regulated under 16 the statute. 17 BY MR. LYLE: 18 Q. Can you provide an example of that? 19 A. Adult content? I'm going to need a 20 working definition of "adult content." 21 Q. Say pornography. 22 A. Do I just -- 23 24 25</p>
<p>79</p> <p>1 speculate about scenarios, but I can 2 think of some, yes. 3 BY MR. LYLE: 4 Q. Could you describe it, please. 5 A. A video displaying cannabis in which 6 the content creator extols the use of cannabis 7 would constitute a viewpoint. 8 Q. Can you provide an example of where 9 a depiction of self-harm would constitute a 10 viewpoint? 11 MR. DISHER: Objection. Form. 12 THE WITNESS: A video in which one 13 user shows another user -- shows the 14 viewer how to perform or hide self-harm 15 could be construed as a viewpoint under 16 the vague terms of the statute. 17 BY MR. LYLE: 18 Q. Could it also be construed as 19 content, self-harm content? 20 MR. DISHER: Objection. Form. 21 THE WITNESS: Potentially. Whose 22 definition of "self-harm content" are we 23 24 25</p>	<p>81</p> <p>1 MR. DISHER: Objection. Form. Go 2 ahead. 3 THE WITNESS: Do I know it when I 4 see it? 5 BY MR. LYLE: 6 Q. I mean, case law is relatively 7 clear. 8 MR. DISHER: Is there a question? 9 MR. LYLE: Yes. 10 MR. DISHER: What's the question? 11 MR. LYLE: The question is whether 12 pornography is content or viewpoint. 13 MR. DISHER: I will object to the 14 form of that question. 15 THE WITNESS: That question 16 presupposes that one -- a thing cannot be 17 both content and viewpoint, which is a -- 18 a premise that I reject. 19 BY MR. LYLE: 20 Q. Are you aware that the Supreme Court 21 of the United States has defined "content" and 22 "viewpoint"? 23 24 25</p>

<p>82</p> <p>1 MR. DISHER: Objection. Form.</p> <p>2 THE WITNESS: I am generally aware</p> <p>3 of Supreme Court definitions in the First</p> <p>4 Amendment context.</p> <p>5 BY MR. LYLE:</p> <p>6 Q. Do you -- is there any reason that</p> <p>7 CCIA sees the Supreme Court's distinction there as</p> <p>8 not applying?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: It depends on the</p> <p>11 context in which we are analyzing the --</p> <p>12 the statute and the -- the unity between</p> <p>13 the definitions of content in HB20 and</p> <p>14 Supreme Court jurisprudence, which is</p> <p>15 something we have not established.</p> <p>16 BY MR. LYLE:</p> <p>17 Q. Let's move on to paragraph 16. You</p> <p>18 talk about how in other circumstances, moderation</p> <p>19 includes giving users tools to decide for</p> <p>20 themselves what content they wish to avoid, such as</p> <p>21 warning labels, disclaimers or general commentary</p> <p>22 informing the user. How would HB20 prohibit this?</p> <p>23</p> <p>24</p> <p>25</p>	<p>84</p> <p>1 It may also deter it by imposing a severe</p> <p>2 penalty based on a misinterpretation --</p> <p>3 well, an inconsistent interpretation</p> <p>4 between the company and the court</p> <p>5 enforcing the statute.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. All right. Let's go on to</p> <p>8 paragraph 18. You talk about how "content</p> <p>9 moderation is necessary so that even the most basic</p> <p>10 online functions, like shopping or searching for</p> <p>11 local businesses or having material arranged by</p> <p>12 topic or geography, work as intended. Without</p> <p>13 prioritizing, classifying, and ordering the</p> <p>14 never-ending volume of online content, online</p> <p>15 services would have no way to deliver the content</p> <p>16 users want."</p> <p>17 What does that have to do with a viewpoint?</p> <p>18 MR. DISHER: Objection. Form.</p> <p>19 THE WITNESS: The order in which a</p> <p>20 service ranks the content that it</p> <p>21 displays to a user is itself the</p> <p>22 service's viewpoint about relevance. And</p> <p>23</p> <p>24</p> <p>25</p>
<p>83</p> <p>1 MR. DISHER: Objection. Form.</p> <p>2 THE WITNESS: Well, by one</p> <p>3 example, allowing users to -- well, all</p> <p>4 right. I think to give you the most</p> <p>5 precise answer, I'd like to look at the</p> <p>6 definition in the statute, if I may.</p> <p>7 BY MR. LYLE:</p> <p>8 Q. Yes.</p> <p>9 A. Yeah. So if -- if the -- just</p> <p>10 hypothetically, if the service were to provide a</p> <p>11 means by which a user can not be served up</p> <p>12 particular categories of content, that, in my view,</p> <p>13 would create a risk of violation of the statute.</p> <p>14 Given its ambiguities, I can't say for</p> <p>15 certain, but in light of its penalties, that</p> <p>16 necessarily chills the company's implementation of</p> <p>17 its trust and safety practices.</p> <p>18 Q. So specific to this example, you're</p> <p>19 saying that HB20 would prevent a company from</p> <p>20 providing a user tools to curate their own content?</p> <p>21 MR. DISHER: Objection. Form.</p> <p>22 THE WITNESS: It may prevent it.</p> <p>23</p> <p>24</p> <p>25</p>	<p>85</p> <p>1 the notion that some potentially</p> <p>2 responsive content to the user is less</p> <p>3 valuable and less relevant to the user's</p> <p>4 query is potentially discrimination under</p> <p>5 the vague definitions of the statute.</p> <p>6 Saying this result is not as responsive</p> <p>7 as this result could be construed as</p> <p>8 discrimination.</p> <p>9 BY MR. LYLE:</p> <p>10 Q. And would that be true in terms of</p> <p>11 relevance based on, for example, geography?</p> <p>12 MR. DISHER: Objection. Form.</p> <p>13 THE WITNESS: Potentially. I'd</p> <p>14 have to think about all those myriad</p> <p>15 scenarios that would arise.</p> <p>16 BY MR. LYLE:</p> <p>17 Q. Well, solely geography, relevance</p> <p>18 based on geography, is that viewpoint?</p> <p>19 MR. DISHER: Objection. Form.</p> <p>20 THE WITNESS: I'm unwilling to</p> <p>21 rule out the idea that -- the notion that</p> <p>22 content might be served up to different</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">86</p> <p>1 geographies and would never constitute a</p> <p>2 viewpoint. I suppose I could construct a</p> <p>3 hypothetical wherein serving different</p> <p>4 results based solely on geography would</p> <p>5 be a viewpoint.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. Can you provide one?</p> <p>8 A. If you give me a few minutes to</p> <p>9 think about it.</p> <p>10 One hypothetical I'll offer is if a service</p> <p>11 elected to not serve up a particular type of</p> <p>12 controversial content in a jurisdiction, which was,</p> <p>13 let's say, presume it to be lawful but politically</p> <p>14 contentious for that jurisdiction, that geography,</p> <p>15 not serving that would appear to be, under the</p> <p>16 terms of the statute, viewpoint discrimination.</p> <p>17 Q. What about searching for, say, a</p> <p>18 piece of furniture to buy? Would the fact that you</p> <p>19 got a result in your area as opposed to on the</p> <p>20 other side of the country be viewpoint</p> <p>21 discrimination?</p> <p>22 MR. DISHER: Objection. Form.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">88</p> <p>1 implementing the policies and guidelines</p> <p>2 and practices that it has. All of those</p> <p>3 choices, collectively the editorial</p> <p>4 discretion of the service, is -- are</p> <p>5 protected under the First Amendment.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. Does it express the service's view</p> <p>8 about what will get more user engagement?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: In some cases. Not</p> <p>11 necessarily.</p> <p>12 BY MR. LYLE:</p> <p>13 Q. In some cases?</p> <p>14 MR. DISHER: Objection. Form.</p> <p>15 THE WITNESS: In some cases what?</p> <p>16 BY MR. LYLE:</p> <p>17 Q. The content moderation expresses the</p> <p>18 service's view of what will get more user</p> <p>19 engagement.</p> <p>20 A. In some cases, content moderation</p> <p>21 may or may not get more user engagement. That is</p> <p>22 independent from the service's editorial judgment</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">87</p> <p>1 THE WITNESS: That particular</p> <p>2 scenario, I'm not certain that I can -- I</p> <p>3 don't want to rule it out, but as a</p> <p>4 general proposition, I think that's less</p> <p>5 likely to constitute -- to represent any</p> <p>6 kind of viewpoint discrimination.</p> <p>7 BY MR. LYLE:</p> <p>8 Q. In paragraph 19, you talk about how</p> <p>9 content moderation is an important way that online</p> <p>10 services express themselves.</p> <p>11 How is that content moderation expressive?</p> <p>12 MR. DISHER: Objection. Form.</p> <p>13 THE WITNESS: Content moderation</p> <p>14 is expressive because digital services</p> <p>15 make decisions about the order and</p> <p>16 arrangement in which they present content</p> <p>17 to the user. That reflects the service's</p> <p>18 view as to what is the most relevant and</p> <p>19 potentially interesting to the user.</p> <p>20 It reflects the service's views</p> <p>21 about what is appropriate and conducive</p> <p>22 to a healthy community, all the while</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">89</p> <p>1 about what it seeks to present to its users. Those</p> <p>2 two things may overlap. They are independent</p> <p>3 variables.</p> <p>4 Q. How do these services make money?</p> <p>5 MR. DISHER: Objection. Form.</p> <p>6 THE WITNESS: Which services?</p> <p>7 BY MR. LYLE:</p> <p>8 Q. Let's just say Facebook, for</p> <p>9 example.</p> <p>10 MR. DISHER: Objection. Form.</p> <p>11 THE WITNESS: Facebook has a</p> <p>12 number of business models, but the</p> <p>13 majority of its revenues for Facebook,</p> <p>14 the blue site, are derived from</p> <p>15 advertising revenue.</p> <p>16 BY MR. LYLE:</p> <p>17 Q. And how does that work?</p> <p>18 MR. DISHER: Objection. Form.</p> <p>19 THE WITNESS: How does internet</p> <p>20 advertising work?</p> <p>21 BY MR. LYLE:</p> <p>22 Q. Yeah, for Facebook.</p> <p>23</p> <p>24</p> <p>25</p>

<p>90</p> <p>1 MR. DISHER: Objection. Form.</p> <p>2 THE WITNESS: Facebook's</p> <p>3 advertising products are complicated, but</p> <p>4 at a -- it is a general level. Facebook</p> <p>5 and many other services allow advertisers</p> <p>6 to serve up ads on its sites based on</p> <p>7 metrics and variables to some extent</p> <p>8 chosen by the advertiser within certain</p> <p>9 boundaries about what you can and cannot</p> <p>10 focus your advertising on, and then uses</p> <p>11 its programming -- these ads are</p> <p>12 algorithmically served up to the users to</p> <p>13 whom those advertisements are expected to</p> <p>14 be most relevant.</p> <p>15 When those ads are served, the</p> <p>16 advertisers effectively pay for it. They</p> <p>17 will generally pay by impressions, the</p> <p>18 number of times the advertising is -- you</p> <p>19 know, will either pay for a period of</p> <p>20 time or pay for an amount of impressions.</p> <p>21 It will probably vary product to product</p> <p>22 and service to service. But those</p> <p>23</p> <p>24</p> <p>25</p>	<p>92</p> <p>1 through to a product or service or</p> <p>2 message or other matter.</p> <p>3 And so that -- those two</p> <p>4 variables, those two conditions will</p> <p>5 change what the advertisers' objectives</p> <p>6 are. Advertisers, though, are</p> <p>7 heterogenous. It's difficult to paint</p> <p>8 them all with one brush.</p> <p>9 BY MR. LYLE:</p> <p>10 Q. How does HB20 prohibit services from</p> <p>11 giving their users what they want to see?</p> <p>12 MR. DISHER: Objection. Form.</p> <p>13 THE WITNESS: In many ways. HB20</p> <p>14 prohibits services from discriminating on</p> <p>15 the basis of viewpoint. Some users may</p> <p>16 not want to see contents of a particular</p> <p>17 viewpoint. Some advertisers may not want</p> <p>18 their brands advertised adjacent to</p> <p>19 particular viewpoints.</p> <p>20 And independently of that, the</p> <p>21 service may view particular viewpoints as</p> <p>22 inappropriate or dangerous or harmful to</p> <p>23</p> <p>24</p> <p>25</p>
<p>91</p> <p>1 advertisements are then served up through</p> <p>2 the platform to the user, and the</p> <p>3 advertisers pay for that.</p> <p>4 BY MR. LYLE:</p> <p>5 Q. And is the user engagement on the</p> <p>6 platform important to those advertisers?</p> <p>7 MR. DISHER: Objection. Form.</p> <p>8 THE WITNESS: It depends.</p> <p>9 BY MR. LYLE:</p> <p>10 Q. What does it depend on?</p> <p>11 MR. DISHER: Objection. Form.</p> <p>12 THE WITNESS: Whether user</p> <p>13 engagement matters depends on the</p> <p>14 advertising goals of the particular</p> <p>15 advertiser.</p> <p>16 Some advertisers simply want to</p> <p>17 raise awareness, in which case the extent</p> <p>18 to which users are engaging with the</p> <p>19 content may be less relevant.</p> <p>20 Others are looking for activation</p> <p>21 or -- I'm sorry, user action, which may</p> <p>22 involve clicking on the ad to continue</p> <p>23</p> <p>24</p> <p>25</p>	<p>93</p> <p>1 its community, irrespective of whether or</p> <p>2 not the content or behavior is legal, and</p> <p>3 not wish to display that to its users.</p> <p>4 All of those decisions are</p> <p>5 threatened by the vague and ambiguous</p> <p>6 definitions and the extreme penalties in</p> <p>7 HB20.</p> <p>8 BY MR. LYLE:</p> <p>9 Q. The viewpoints now that your members</p> <p>10 allow on their websites, what is the relationship</p> <p>11 of those viewpoints to the members? Are they</p> <p>12 fostering those viewpoints?</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: I don't believe it's</p> <p>15 accurate to say companies are fostering</p> <p>16 viewpoints, no. Companies seek to foster</p> <p>17 a particular type of community consistent</p> <p>18 with the Terms of Service and guidelines</p> <p>19 and commitments it's made to its users.</p> <p>20 That may have indirect effects on</p> <p>21 viewpoints.</p> <p>22 Companies don't set out -- well,</p> <p>23</p> <p>24</p> <p>25</p>

<p>94</p> <p>1 in my general understanding, companies 2 aren't setting out to foster viewpoints. 3 They are setting out to provide a service 4 consistent with the representations 5 they've made to their users and their 6 advertisers about what will appear on 7 their service. That, without a doubt, 8 embodies the values of the service, but 9 also the values of the users who are on 10 the service and those of the advertisers 11 who advertise on the service.</p> <p>12 BY MR. LYLE:</p> <p>13 Q. And that determines what content 14 they let on and what content they don't let on --</p> <p>15 MR. DISHER: Objection. Form.</p> <p>16 BY MR. LYLE:</p> <p>17 Q. -- is that correct?</p> <p>18 A. When you say "that," are you 19 referring to all those value judgments that I --</p> <p>20 Q. So in order to, as you put it in 21 paragraph 19, foster the kind of community that 22 companies have promised to their users, part of 23 24 25</p>	<p>96</p> <p>1 sets out with a new product, they will 2 make design choices, choices about 3 potential risks that the product could 4 present.</p> <p>5 BY MR. LYLE:</p> <p>6 Q. Let's just start from like when 7 something pops up and it needs to be moderated. 8 What happens? Let's say an image that is 9 inconsistent with -- or may be inconsistent with 10 the service's Terms of Service posted, what happens 11 then?</p> <p>12 A. That's not --</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: That's not really 15 how this works. But I think if you're 16 asking what happens when content or 17 behavior runs against the governance, I 18 think I can answer that question.</p> <p>19 Generally speaking, there will be 20 either automated systems or human 21 systems, depending on the nature of the 22 product, the resources that the company 23 24 25</p>
<p>95</p> <p>1 this is moderating what content they allow on their 2 service. Is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. And so there's a value judgment 5 going into the curating of the content; correct?</p> <p>6 MR. DISHER: Objection. Form.</p> <p>7 THE WITNESS: Companies' curations 8 of -- curation of content, at times, 9 unquestionably reflects a value 10 judgment -- multiple value judgments.</p> <p>11 BY MR. LYLE:</p> <p>12 Q. And the environments that are 13 created by these services reflect the services' 14 value judgments as well; correct?</p> <p>15 A. Among other things, yes.</p> <p>16 Q. Can you describe how that content 17 moderation in paragraph 19 occurs with reference to 18 software and to humans?</p> <p>19 MR. DISHER: Objection. Form.</p> <p>20 THE WITNESS: I believe we touched 21 on this previously, but yeah. As a 22 general matter, when a digital service 23 24 25</p>	<p>97</p> <p>1 is able to devote to it, the type of risk 2 and whether or not that risk is something 3 that can easily be automated.</p> <p>4 And, additionally, the context 5 dependence of the content, which can be 6 very volatile. So there may be either an 7 automated process that will lead to 8 actioning of content or behavior or it 9 is -- it winds up before a content 10 moderator person, a member of a trust and 11 safety team, either because it's been 12 flagged by a user or because the content 13 moderators themselves observed the 14 content which itself may be a function of 15 an automated system that pops up in the 16 queue.</p> <p>17 And then if it's an automated 18 system, the automated system will action 19 the content according to the heuristics 20 that have been established; but almost 21 invariably, that will wind up before a 22 human because even though those 23 24 25</p>

<p>98</p> <p>1 programming decisions were made by 2 humans, the automation process has false 3 positives and negatives which need to be 4 reviewed. 5 And if it's strictly a human 6 process, we wind up in the same place 7 where moderation action may be taken. It 8 will vary. It could be any number of 9 outcomes based on the -- again, the 10 product and the tools used by the 11 service. 12 And then based on that action, 13 sometimes users will have an appeal 14 mechanism or a review mechanism, which 15 are not the same thing. And then the 16 service may, you know, respond to that 17 accordingly. Depending on the gravity of 18 the offense, there may be actions taken 19 with respect to the user's account. 20 BY MR. LYLE: 21 Q. Is that process expressive? 22 MR. DISHER: Objection. Form. 23 24 25</p>	<p>100</p> <p>1 by federal or state law. 2 BY MR. LYLE: 3 Q. Do you know which ones? 4 MR. DISHER: Same objection. 5 THE WITNESS: I cannot, sitting 6 here now, speak with complete specificity 7 about every state and federal 8 jurisdiction. However, there are -- a 9 number of these categories, including 10 child sexual abuse, are governed by -- 11 well, are -- the federal law will read 12 upon those categories. 13 BY MR. LYLE: 14 Q. Which others? 15 A. Well -- 16 MR. DISHER: Sorry, what did you 17 say? 18 MR. LYLE: Which others. 19 MR. DISHER: Oh. Objection. 20 Form. 21 THE WITNESS: Wait. Which others 22 what? 23 24 25</p>
<p>99</p> <p>1 THE WITNESS: Yes. 2 BY MR. LYLE: 3 Q. How so? 4 MR. DISHER: Same objection. 5 THE WITNESS: How are choices 6 about what content to present to your 7 users expressive? They are expressive in 8 the same way that any editorial choice 9 about what to put before a user is 10 expressive. 11 BY MR. LYLE: 12 Q. Let's go to paragraph 20. You list 13 here things that social media companies regularly 14 enforce their Terms of Service to remove. You've 15 got illegal nonconsensual intimate imagery, 16 depictions of child sex abuse, calls for genocide, 17 a number of other things. 18 Does federal or state law prohibit showing 19 any of these categories of content? 20 MR. DISHER: Objection. Form. 21 THE WITNESS: Some of the subjects 22 listed in this paragraph may be covered 23 24 25</p>	<p>101</p> <p>1 BY MR. LYLE: 2 Q. You said federal -- maybe I 3 misunderstood. You said federal law will what upon 4 the category of child sex -- 5 A. Read on these categories. 6 Q. What does that mean? 7 A. By which I mean, depictions of child 8 sex abuse may be broader than the federal 9 definition for CSAM -- for child sexual abuse 10 materials. In other words, the policy may extend 11 to things that are adjacent to but not expressly 12 prohibited by federal law. 13 Q. Are there any other examples in that 14 paragraph that that is true of? 15 MR. DISHER: Objection. Form. 16 THE WITNESS: Yes. 17 BY MR. LYLE: 18 Q. Which ones? 19 A. So -- 20 MR. DISHER: Objection. Form. Go 21 ahead. 22 THE WITNESS: That's the case for 23 24 25</p>

<p>102</p> <p>1 attempts to sell weapons and drugs.</p> <p>2 There may be regulated controlled</p> <p>3 substances or weapons whose sale are</p> <p>4 restricted by federal or state law in</p> <p>5 particular contexts, but in many cases,</p> <p>6 one may find that a service's TOS, Terms</p> <p>7 of Service, are broader than the federal</p> <p>8 regulations or state regulations, either</p> <p>9 because the sense is that better protects</p> <p>10 user safety or simply for</p> <p>11 administrability reasons.</p> <p>12 BY MR. LYLE:</p> <p>13 Q. Let's go on to Paragraph 21. You</p> <p>14 talk about how "content moderation facilitates the</p> <p>15 organization of content rendering an online service</p> <p>16 more useful. Imagine if a search engine presented</p> <p>17 results in a random or purely chronological order."</p> <p>18 Is it your position that HB20 would prevent</p> <p>19 a search engine from presenting results in</p> <p>20 something other than a random or purely</p> <p>21 chronological order?</p> <p>22 MR. DISHER: Objection. Form.</p> <p>23</p> <p>24</p> <p>25</p>	<p>104</p> <p>1 service to expressly downrank hate</p> <p>2 speech, anti-Semitism, or otherwise</p> <p>3 violent or vitriolic content directed at</p> <p>4 a group of individuals, irrespective of</p> <p>5 its relevance otherwise, could be</p> <p>6 construed as a violation of the</p> <p>7 prohibition on viewpoint discrimination</p> <p>8 and thereby run afoul of the statute.</p> <p>9 BY MR. LYLE:</p> <p>10 Q. Now, what about examples not</p> <p>11 involving vitriolic content?</p> <p>12 A. Like --</p> <p>13 MR. DISHER: Is that the end of</p> <p>14 your question?</p> <p>15 MR. LYLE: Yeah.</p> <p>16 MR. DISHER: Objection. Form.</p> <p>17 THE WITNESS: Like hate speech or</p> <p>18 anti-Semitism?</p> <p>19 BY MR. LYLE:</p> <p>20 Q. Outside of these subject areas.</p> <p>21 MR. DISHER: Objection. Form.</p> <p>22 THE WITNESS: There are many other</p> <p>23</p> <p>24</p> <p>25</p>
<p>103</p> <p>1 THE WITNESS: No. Do you want to</p> <p>2 restate that question?</p> <p>3 BY MR. LYLE:</p> <p>4 Q. So --</p> <p>5 (Discussion held off the</p> <p>6 record.)</p> <p>7 BY MR. LYLE:</p> <p>8 Q. Is it your contention that HB20</p> <p>9 would prevent services from prioritizing what was</p> <p>10 most relevant in the context of search engines?</p> <p>11 MR. DISHER: Objection. Form.</p> <p>12 THE WITNESS: It may, in at least</p> <p>13 some cases.</p> <p>14 BY MR. LYLE:</p> <p>15 Q. Can you provide some examples of</p> <p>16 those cases?</p> <p>17 A. Where the choice about relevance</p> <p>18 runs up against a user's viewpoint regulated by --</p> <p>19 regulated by HB20.</p> <p>20 Q. Such as?</p> <p>21 MR. DISHER: Objection. Form.</p> <p>22 THE WITNESS: A choice by a</p> <p>23</p> <p>24</p> <p>25</p>	<p>105</p> <p>1 categories of content that a service may</p> <p>2 choose to downrank whose presentation --</p> <p>3 whose -- that may be construed by a user</p> <p>4 as a viewpoint and whose deprioritization</p> <p>5 would constitute viewpoint</p> <p>6 discrimination.</p> <p>7 BY MR. LYLE:</p> <p>8 Q. Is anti-Semitic speech, in your</p> <p>9 view, viewpoint or content?</p> <p>10 MR. DISHER: Objection. Form.</p> <p>11 THE WITNESS: I believe</p> <p>12 anti-Semitic speech can be both a</p> <p>13 viewpoint -- it would -- well, as I</p> <p>14 understand those terms, unless the</p> <p>15 content -- unless the material that we</p> <p>16 are speaking about is totally ephemeral,</p> <p>17 meaning it was never fixed at any point</p> <p>18 in time for more than a transitory</p> <p>19 measure, then it would be both content</p> <p>20 and viewpoint.</p> <p>21 BY MR. LYLE:</p> <p>22 Q. Let's go on to Paragraph 22.</p> <p>23</p> <p>24</p> <p>25</p>

<p>106</p> <p>1 MR. DISHER: Could we take another</p> <p>2 break?</p> <p>3 MR. LYLE: Yeah.</p> <p>4 MR. DISHER: 10 minutes.</p> <p>5 THE VIDEOGRAPHER: We are going</p> <p>6 off the record. This is the end of media</p> <p>7 Unit No. 2. The time is 4:38 p.m.</p> <p>8 (Recess)</p> <p>9 THE VIDEOGRAPHER: We are back on</p> <p>10 the record. This is the beginning of</p> <p>11 media Unit No. 3. The time is 4:53 p.m.</p> <p>12 BY MR. LYLE:</p> <p>13 Q. Let's go to paragraph 22 of your</p> <p>14 declaration, Mr. Schruers.</p> <p>15 A. 22?</p> <p>16 Q. Yes. Here you say the members of</p> <p>17 the public associate digital services with</p> <p>18 third-party content that appears in their service.</p> <p>19 A. Uh-huh.</p> <p>20 Q. What's the basis for your knowledge</p> <p>21 of that?</p> <p>22 A. Having discussed it with companies,</p> <p>23</p> <p>24</p> <p>25</p>	<p>108</p> <p>1 A. They have, some.</p> <p>2 Q. Have you relied on any documents</p> <p>3 other than what you've produced to form the</p> <p>4 opinions in paragraph 22?</p> <p>5 A. Not expressly that I can recall.</p> <p>6 But having formed a view over more than 15 years in</p> <p>7 this industry and observing that advertisers</p> <p>8 regularly associate -- are concerned about being</p> <p>9 associated with content that appears adjacent to</p> <p>10 their brands. There may be some documents that I</p> <p>11 don't recall that informed of this viewpoint.</p> <p>12 Q. But everything that you recall was</p> <p>13 in the discovery production?</p> <p>14 A. Yes.</p> <p>15 Q. In paragraph 23 you -- you talk</p> <p>16 about how a service's policy on sensitive media is</p> <p>17 as equally expressive as a newspaper's calls about</p> <p>18 which stories make the front page. And then I'm</p> <p>19 not going to read the rest of it. And you say that</p> <p>20 the difference is that online service providers are</p> <p>21 called upon to make moderation decisions on a vast</p> <p>22 scale for immense volumes of content.</p> <p>23</p> <p>24</p> <p>25</p>
<p>107</p> <p>1 advertisers. Having observed boycotts. Having</p> <p>2 observed individual members of the public and</p> <p>3 policy makers stating as much, among other things.</p> <p>4 Q. Is a basis of your knowledge</p> <p>5 conversations with your members?</p> <p>6 MR. DISHER: Objection. Form.</p> <p>7 THE WITNESS: Conversations with</p> <p>8 members inform my view that -- my</p> <p>9 knowledge that members of the public</p> <p>10 associate companies with content that</p> <p>11 appears -- and behavior that appears on</p> <p>12 their service.</p> <p>13 BY MR. LYLE:</p> <p>14 Q. Have your members told you that?</p> <p>15 A. Some.</p> <p>16 Q. What's the basis for your knowledge</p> <p>17 that advertisers associate digital services with</p> <p>18 the content that appears on their sites?</p> <p>19 A. The same.</p> <p>20 Q. Advertisers have told you that?</p> <p>21 A. Some.</p> <p>22 Q. Your members have told you that?</p> <p>23</p> <p>24</p> <p>25</p>	<p>109</p> <p>1 Is it your contention that that difference</p> <p>2 is the only difference between the calls social</p> <p>3 media services make as to what sensitive media to</p> <p>4 display and what a newspaper's editorials show?</p> <p>5 MR. DISHER: Objection. Form.</p> <p>6 THE WITNESS: My contention is</p> <p>7 that it is a difference. I do not think</p> <p>8 saying the difference is equivalent as</p> <p>9 saying the only difference.</p> <p>10 BY MR. LYLE:</p> <p>11 Q. What are the -- what are the other</p> <p>12 differences?</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: There are</p> <p>15 technological differences. There are</p> <p>16 timing differences. Digital services are</p> <p>17 generally making decisions in a very</p> <p>18 short time span. They are expected to</p> <p>19 get it right, where "right" is a highly</p> <p>20 subjective notion. They manifest those</p> <p>21 decisions in digital form online.</p> <p>22 Newspapers may only manifest those</p> <p>23</p> <p>24</p> <p>25</p>

<p>110</p> <p>1 decisions in print, although recognizing</p> <p>2 that many newspapers also have websites.</p> <p>3 BY MR. LYLE:</p> <p>4 Q. Are newspapers protected under 230</p> <p>5 of the Communications Decency Act?</p> <p>6 MR. DISHER: Objection. Form.</p> <p>7 THE WITNESS: Insofar as they are</p> <p>8 performing functions that are consistent</p> <p>9 with being an interactive computer</p> <p>10 service, yes, they are.</p> <p>11 BY MR. LYLE:</p> <p>12 Q. Functions that are not consistent</p> <p>13 with being an interactive computer service, are</p> <p>14 they protected for those?</p> <p>15 MR. DISHER: Objection. Form.</p> <p>16 THE WITNESS: Section 230 only --</p> <p>17 Section 230's protections only apply to</p> <p>18 interactive computer services.</p> <p>19 BY MR. LYLE:</p> <p>20 Q. So newspapers' activities that are</p> <p>21 not part of interactive computer services are not</p> <p>22 protected by 230; correct?</p> <p>23</p> <p>24</p> <p>25</p>	<p>112</p> <p>1 companies?</p> <p>2 MR. DISHER: Objection. Form.</p> <p>3 THE WITNESS: It depends.</p> <p>4 BY MR. LYLE:</p> <p>5 Q. What does it depend on?</p> <p>6 MR. DISHER: Objection. Form.</p> <p>7 THE WITNESS: Among other things,</p> <p>8 how they choose to -- if -- including if</p> <p>9 they choose to monetize that service.</p> <p>10 BY MR. LYLE:</p> <p>11 Q. Do some choose to monetize that</p> <p>12 service?</p> <p>13 A. Yes.</p> <p>14 Q. What's an example of your member --</p> <p>15 of a member of yours who has huge scale and</p> <p>16 attempts to monetize that service?</p> <p>17 A. Define "huge."</p> <p>18 Q. Well, what you're referring to here</p> <p>19 as "vast scale."</p> <p>20 A. Okay. Is the scale within the scope</p> <p>21 of Paragraph 23?</p> <p>22 Q. Yes.</p> <p>23</p> <p>24</p> <p>25</p>
<p>111</p> <p>1 MR. DISHER: Objection. Form.</p> <p>2 THE WITNESS: Insofar as a</p> <p>3 newspaper is not behaving as an</p> <p>4 interactive computer service, it is not</p> <p>5 protected by Section 230.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. And what are those 230 protections</p> <p>8 from? Are they --</p> <p>9 MR. DISHER: Objection.</p> <p>10 BY MR. LYLE:</p> <p>11 Q. -- from liability for third-party</p> <p>12 content?</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: Section 230</p> <p>15 generally protects interactive computer</p> <p>16 services from liability for third-party</p> <p>17 content, yeah.</p> <p>18 BY MR. LYLE:</p> <p>19 Q. The same scale that you refer to in</p> <p>20 Paragraph 23 that online services must make</p> <p>21 moderation decisions for, is that huge scale also a</p> <p>22 source of huge revenue and resources for these</p> <p>23</p> <p>24</p> <p>25</p>	<p>113</p> <p>1 A. I think many of my member companies</p> <p>2 have the scale contemplated in Paragraph 23,</p> <p>3 including some who have already been described in</p> <p>4 the declaration, like Google and Facebook.</p> <p>5 Q. And do Google and Facebook choose to</p> <p>6 monetize content?</p> <p>7 MR. DISHER: Objection. Form.</p> <p>8 THE WITNESS: Google and</p> <p>9 Facebook -- some -- some products.</p> <p>10 They -- do they -- I don't think it's</p> <p>11 accurate to say they monetize content.</p> <p>12 They monetize the product. There may be</p> <p>13 content presented within the product.</p> <p>14 BY MR. LYLE:</p> <p>15 Q. Let's go to paragraph 24. You have</p> <p>16 some numbers in here about the billions of people</p> <p>17 in the Facebook community, the number of stories,</p> <p>18 the active stories on Instagram. Are the various</p> <p>19 hard numbers you provide in paragraph 24</p> <p>20 subsections pulled from the articles you cite?</p> <p>21 A. I believe these numbers were pulled</p> <p>22 directly from Facebook transparency reports and</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">114</p> <p>1 other public accounts. Other -- I'm sorry, other</p> <p>2 accounts to the public by Facebook.</p> <p>3 Q. And are those cited here in your</p> <p>4 declaration or not?</p> <p>5 A. I'm referring to the numbers cited</p> <p>6 in the declaration.</p> <p>7 Q. But the citations for those numbers,</p> <p>8 are those --</p> <p>9 A. Yes, yes.</p> <p>10 Q. Okay. Those are in the declaration?</p> <p>11 A. Indeed. Generally speaking, the</p> <p>12 footnotes here, 38 to 41.</p> <p>13 Q. That information in the subsections</p> <p>14 of paragraph 24, how did each of those companies</p> <p>15 get that information?</p> <p>16 A. I am not a content moderator for</p> <p>17 these companies. While I have a broad knowledge of</p> <p>18 how content moderation practices as a subset of</p> <p>19 trust and safety are implemented across the entire</p> <p>20 industry, I don't have granular visibility into</p> <p>21 their transparency and public accounting processes</p> <p>22 other than what I see as a member of the industry</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">116</p> <p>1 teams and divisions which are generally either the</p> <p>2 trust or trust and safety or content moderation</p> <p>3 teams of these companies traditionally are those</p> <p>4 charged with implementing and executing their</p> <p>5 transparency efforts.</p> <p>6 Q. And did the companies do it</p> <p>7 internally?</p> <p>8 MR. DISHER: Objection. Form.</p> <p>9 THE WITNESS: As opposed to what?</p> <p>10 BY MR. LYLE:</p> <p>11 Q. Having an outside party.</p> <p>12 MR. DISHER: Same objection.</p> <p>13 THE WITNESS: I cannot rule out</p> <p>14 that some companies may have outside</p> <p>15 parties.</p> <p>16 BY MR. LYLE:</p> <p>17 Q. Are you aware of any companies</p> <p>18 having outside parties compile this information?</p> <p>19 A. I am aware that some companies</p> <p>20 utilize contractors in their trust and safety</p> <p>21 practices. And those contractors, as one of their</p> <p>22 many responsibilities pursuant to the contract, may</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">115</p> <p>1 association and in my role at DTSP and in my</p> <p>2 conversations with the companies.</p> <p>3 But I cannot answer the question how did</p> <p>4 each company go about gathering this data other</p> <p>5 than to say that it is gathered as a part of its</p> <p>6 trust and safety or equivalent practice.</p> <p>7 Q. Do you know how long it took them to</p> <p>8 gather it?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: Other than that this</p> <p>11 kind of reporting is resource intensive,</p> <p>12 no.</p> <p>13 BY MR. LYLE:</p> <p>14 Q. Do you know who was responsible for</p> <p>15 compiling it?</p> <p>16 MR. DISHER: Objection. Form.</p> <p>17 THE WITNESS: Compiling the</p> <p>18 numbers described here in the</p> <p>19 declaration?</p> <p>20 BY MR. LYLE:</p> <p>21 Q. Yes.</p> <p>22 A. I know the teams. I am aware of the</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">117</p> <p>1 have a data collection responsibility and a</p> <p>2 reporting function.</p> <p>3 Q. Which companies are those?</p> <p>4 A. At this moment, I could not say.</p> <p>5 Over time, I know as a fact that Facebook has</p> <p>6 utilized about third-party contractors in its trust</p> <p>7 and safety plan -- trust and safety practices.</p> <p>8 Q. Do you know the names of any of</p> <p>9 those third-party contractors?</p> <p>10 A. Not sitting here now, no.</p> <p>11 Q. Do you know how much it cost the</p> <p>12 companies to compile that information?</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: Enough that smaller</p> <p>15 companies find transparency reporting to</p> <p>16 be a challenging endeavor. Beyond that,</p> <p>17 no.</p> <p>18 BY MR. LYLE:</p> <p>19 Q. What about larger companies? Do</p> <p>20 they find it to be a challenging endeavor?</p> <p>21 A. It is certainly a costly and</p> <p>22 time-intensive undertaking. It is a challenging</p> <p>23</p> <p>24</p> <p>25</p>

<p>118</p> <p>1 endeavor.</p> <p>2 Q. Is it more challenging for small</p> <p>3 companies or for larger companies?</p> <p>4 MR. DISHER: Objection. Form.</p> <p>5 THE WITNESS: That's difficult to</p> <p>6 answer. It will be a function of the</p> <p>7 size of the content on the service, the</p> <p>8 nature of the product, the number of the</p> <p>9 user base and the resources that the</p> <p>10 company has.</p> <p>11 In a situation where you have a</p> <p>12 service which has grown at a rate faster</p> <p>13 than its infrastructure anticipated, the</p> <p>14 burden can be extraordinary.</p> <p>15 BY MR. LYLE:</p> <p>16 Q. Some of the citations you have for</p> <p>17 these numbers in paragraphs 24A to 24E involve</p> <p>18 transparency reports issued by these companies.</p> <p>19 A. Uh-huh.</p> <p>20 Q. Sorry? Is that a "yes"?</p> <p>21 A. Yes, I hear you and I agree, they</p> <p>22 do.</p> <p>23</p> <p>24</p> <p>25</p>	<p>120</p> <p>1 companies who offer user-facing services have</p> <p>2 commented on the burden and cost associated with</p> <p>3 this.</p> <p>4 Q. Can you think of any names of</p> <p>5 companies that have commented on it?</p> <p>6 A. I believe I have had conversations</p> <p>7 about products offered by YouTube, Twitter, Meta,</p> <p>8 at least, and there are likely other conversations</p> <p>9 that I'm not precisely recalling now regarding the</p> <p>10 burden. And, actually, Pinterest. There may be</p> <p>11 others that I just don't recall.</p> <p>12 Q. How are HB20's disclosure</p> <p>13 requirements different from the transparency</p> <p>14 reports you've cited?</p> <p>15 MR. DISHER: Objection. Form.</p> <p>16 THE WITNESS: That's difficult to</p> <p>17 answer that question with any precision</p> <p>18 because companies' transparency reports</p> <p>19 vary. If it's useful, you can talk about</p> <p>20 where industry practice generally differs</p> <p>21 from the transparency requirements.</p> <p>22 Sorry. I don't know where the</p> <p>23</p> <p>24</p> <p>25</p>
<p>119</p> <p>1 Q. Why -- why do these companies issue</p> <p>2 transparency reports?</p> <p>3 MR. DISHER: Objection. Form.</p> <p>4 THE WITNESS: Why? Well, I can't</p> <p>5 speak to the specific motives of any</p> <p>6 individual company. I believe it is</p> <p>7 generally viewed across industry that as</p> <p>8 best resources permit, being transparent</p> <p>9 about how trust and safety operations are</p> <p>10 implemented fosters trust and confidence</p> <p>11 in users and advertisers and is</p> <p>12 subjectively desirable.</p> <p>13 BY MR. LYLE:</p> <p>14 Q. Have any of these companies that</p> <p>15 issued these reports, have they told you that</p> <p>16 issuing those reports was burdensome on them?</p> <p>17 A. Yes.</p> <p>18 Q. Which ones?</p> <p>19 A. Sitting here today, I cannot</p> <p>20 specifically recall conversations, but I would say</p> <p>21 that in the context of my conversations with CCIA</p> <p>22 and DTSP member companies, the majority of</p> <p>23</p> <p>24</p> <p>25</p>	<p>121</p> <p>1 transparency provisions are.</p> <p>2 Okay. Yes, this is now coming</p> <p>3 back to me. So as a general matter,</p> <p>4 reporting every 12 months is a challenge</p> <p>5 even for large companies. Reporting with</p> <p>6 respect to a six-month period would be</p> <p>7 doubly so. The statute requires tracking</p> <p>8 particular instances of things which some</p> <p>9 companies may simply not track, and the</p> <p>10 burden of rebuilding their trust and</p> <p>11 safety operations to catalog removal,</p> <p>12 demonetization, deprioritization are</p> <p>13 vastly burdensome, to say the least and,</p> <p>14 in some cases, not potentially</p> <p>15 operationalizable [sic]. By which I mean</p> <p>16 to the extent that some events of</p> <p>17 moderation may occur in an automatic</p> <p>18 fashion or when a service -- when a user</p> <p>19 queries the service, does that count;</p> <p>20 and, if so, how do you track that?</p> <p>21 Generally speaking, the</p> <p>22 granularity of this, of the statute, is</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">122</p> <p>1 far greater than the transparency</p> <p>2 reporting that even the most</p> <p>3 sophisticated companies do right now. To</p> <p>4 say that it's burdensome is a gross</p> <p>5 understatement.</p> <p>6 BY MR. LYLE:</p> <p>7 Q. Would it be possible for the members</p> <p>8 to comply with HB20?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: Possible relative to</p> <p>11 what?</p> <p>12 BY MR. LYLE:</p> <p>13 Q. How about economically feasible.</p> <p>14 Would they go out of business?</p> <p>15 MR. DISHER: Objection. Form.</p> <p>16 THE WITNESS: Certainly, some of</p> <p>17 them would be faced with the option of</p> <p>18 operating in the market of -- of exiting</p> <p>19 the marketplace rather than attempting to</p> <p>20 comply with the statute.</p> <p>21 BY MR. LYLE:</p> <p>22 Q. Which -- which members would that</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">124</p> <p>1 burdensome regulation can vary</p> <p>2 considerably, including limiting the</p> <p>3 nature of a product, restricting the</p> <p>4 features of a product, among other</p> <p>5 practices. And it's hard to say with any</p> <p>6 degree of reliability what -- what I can</p> <p>7 confidently tell you would happen in the</p> <p>8 future for a company trying to comply</p> <p>9 other than that it is extremely</p> <p>10 burdensome.</p> <p>11 BY MR. LYLE:</p> <p>12 Q. Which companies do you believe would</p> <p>13 be able to stay in the market by making alterations</p> <p>14 to their business model?</p> <p>15 MR. DISHER: Objection. Form.</p> <p>16 THE WITNESS: I don't know that I</p> <p>17 believe any company would -- could</p> <p>18 cost-effectively stay in the Texas market</p> <p>19 and comply with the statute.</p> <p>20 BY MR. LYLE:</p> <p>21 Q. What specific disclosure</p> <p>22 requirements in HB20 go beyond transparency</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">123</p> <p>1 be?</p> <p>2 MR. DISHER: Objection. Form.</p> <p>3 THE WITNESS: That would require</p> <p>4 me to speculate.</p> <p>5 BY MR. LYLE:</p> <p>6 Q. Can you?</p> <p>7 A. No.</p> <p>8 MR. DISHER: Objection. Form.</p> <p>9 BY MR. LYLE:</p> <p>10 Q. You're refusing to speculate on</p> <p>11 which members would have to exit the market rather</p> <p>12 than comply with HB20?</p> <p>13 A. Yes.</p> <p>14 MR. DISHER: Objection. Form.</p> <p>15 THE WITNESS: Yes, I am.</p> <p>16 BY MR. LYLE:</p> <p>17 Q. What about members that would not</p> <p>18 have to exit the market?</p> <p>19 MR. DISHER: Objection to form.</p> <p>20 THE WITNESS: Again, this is not</p> <p>21 something that is easy to predict. The</p> <p>22 means by which companies comply with</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">125</p> <p>1 reporting?</p> <p>2 MR. DISHER: Objection. Form.</p> <p>3 THE WITNESS: To my knowledge,</p> <p>4 very few services report granularly about</p> <p>5 demonetization, deprioritization,</p> <p>6 contextualization, which is how I</p> <p>7 interpret the addition of an assessment</p> <p>8 to content or any other action, whatever</p> <p>9 that means.</p> <p>10 BY MR. LYLE:</p> <p>11 Q. Why -- why don't they report on</p> <p>12 that?</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: Because it's</p> <p>15 extraordinarily burdensome.</p> <p>16 BY MR. LYLE:</p> <p>17 Q. But surely they -- they keep records</p> <p>18 of that sort of thing?</p> <p>19 MR. DISHER: Objection. Form.</p> <p>20 THE WITNESS: Do they?</p> <p>21 BY MR. LYLE:</p> <p>22 Q. I mean, isn't that part of their</p> <p>23</p> <p>24</p> <p>25</p>

<p>126</p> <p>1 whole process of user engagement and, I mean, 2 figuring out like where their algorithms have 3 gotten it right to increase user engagement and 4 where they haven't? 5 MR. DISHER: Objection. Form. 6 THE WITNESS: Not necessarily. 7 BY MR. LYLE: 8 Q. So a company sort of tracking how 9 it's deprioritized things doesn't play into its 10 ongoing attempt to curate its content? 11 MR. DISHER: Objection. Form. 12 THE WITNESS: I'm not sure I know 13 what you mean by "playing into." 14 BY MR. LYLE: 15 Q. So if, for example, a company 16 instructs an algorithm that deprioritizes a certain 17 kind of content. They wouldn't keep a record of 18 that for terms of -- for purposes of tweaking the 19 algorithm in the future to see if that kind of 20 deprioritization worked, for lack of a better word? 21 A. They may. There is no guarantee 22 that they do or that, if they do, that this 23 24 25</p>	<p>128</p> <p>1 BY MR. LYLE: 2 Q. Is that because you don't know the 3 answer? 4 A. Yes. I do not have that level of 5 granular visibility into their policy 6 implementations. 7 Q. Is that true of YouTube as well? 8 A. It is the same for YouTube. 9 Q. What about Twitter? 10 A. Likewise. 11 Q. Let's go to paragraph 31 where you 12 talk about much of moderation must be done 13 algorithmically because of the scale. 14 MR. DISHER: Sorry, what 15 paragraph? 16 MR. LYLE: 31. 17 BY MR. LYLE: 18 Q. What's -- what's the basis of 19 your -- for your knowledge of that to make that 20 claim? 21 A. Discussions with industry experts, 22 familiarity with the operational literature on 23 24 25</p>
<p>127</p> <p>1 information could be reported in any meaningful 2 manner to the State of Texas -- 3 Q. But do you -- 4 A. -- twice a year. 5 Q. Do they keep the records? 6 MR. DISHER: Objection. Form. 7 THE WITNESS: Do who keep what 8 records? 9 BY MR. LYLE: 10 Q. The services of deprioritizing 11 certain kinds of content. 12 A. I can't speak to that across all 13 companies or without knowing what types of content 14 we're talking about. 15 Q. How about Facebook? Does it keep 16 records of what it deprioritizes? 17 MR. DISHER: Objection. Form. 18 THE WITNESS: I can't speak 19 specifically to Facebook's internal 20 implementation of its trust and safety 21 practices. 22 23 24 25</p>	<p>129</p> <p>1 content moderation and trust and safety practice. 2 My general knowledge of being in this space for 3 many years and helping to found the Digital Trust &amp; 4 Safety Partnership. And my basic observation, like 5 anyone else, that there is a very large amount of 6 content and behavior on nearly all the services 7 that we're talking about. 8 Q. And is that true of the basis of 9 your knowledge that algorithmic processes are 10 needed to screen content? 11 A. Can you point to me where in the 12 declaration I say they are needed? 13 Q. Well, "the capacity to make 14 moderation decisions algorithmically in the first 15 instance is vitally important to many services 16 offered by CCIA members" and its moderation of 17 incalculable content online. There. 18 MR. DISHER: I'm sorry, where are 19 you reading? 20 MR. LYLE: So 32, the first two 21 sentences. 22 THE WITNESS: I do not agree that 23 24 25</p>

<p>130</p> <p>1 algorithmic is needed in all instances.  2 And, in fact, some services do rely  3 principally on human moderation or  4 community moderation.  5 BY MR. LYLE:  6 Q. Which services are those?  7 A. It can vary from product to product  8 over time, but although they are not a CCIA member,  9 Reddit is frequently pointed to as the service who  10 most directly utilizes community moderation.  11 Q. Of your members, which ones  12 principally rely on nonalgorithmic moderation?  13 MR. DISHER: Objection. Form.  14 THE WITNESS: Well, they all rely  15 on human moderation in conjunction with  16 algorithmic software code-driven  17 processing. Are you asking me about  18 exclusively?  19 BY MR. LYLE:  20 Q. Well, which are the ones that must  21 do much of their moderation algorithmically in  22 order to function that you referred to in  23  24  25</p>	<p>132</p> <p>1 BY MR. LYLE:  2 Q. Is that discrimination based on --  3 is that banning based on viewpoint?  4 MR. DISHER: Same objection.  5 THE WITNESS: Can you restate that  6 question.  7 BY MR. LYLE:  8 Q. So when your members ban medical  9 disinformation aimed at the public by foreign  10 government propagandists, is that a ban based on  11 viewpoint?  12 MR. DISHER: Objection. Form.  13 THE WITNESS: It is a ban that --  14 it -- it is banning content based on the  15 viewpoint the content expresses.  16 BY MR. LYLE:  17 Q. And when your members allow  18 viewpoint -- or they allow content, is that  19 allowing content based on the viewpoint the content  20 expresses?  21 MR. DISHER: Objection. Form.  22 THE WITNESS: Not necessarily.  23  24  25</p>
<p>131</p> <p>1 Paragraph 31?  2 A. In that case, I think that statement  3 accurately describes products, although not all  4 products, offered by Google -- at least some  5 products offered by Google, Facebook, Apple,  6 Amazon, Twitter, Pinterest and others.  7 Q. Go to Paragraph 35, please. The one  8 that begins with "H.B. 20 bans 'censorship' of  9 'viewpoint.'  10 A. Yes.  11 Q. When your members ban Taliban  12 extremist content, is that banning based on  13 viewpoint?  14 MR. DISHER: Objection. Form.  15 THE WITNESS: Yes.  16 BY MR. LYLE:  17 Q. What about when they ban medical  18 disinformation aimed at the public by foreign  19 government propagandists?  20 MR. DISHER: Objection. Form.  21 THE WITNESS: What about it?  22  23  24  25</p>	<p>133</p> <p>1 BY MR. LYLE:  2 Q. Is it sometimes?  3 A. In some cases.  4 Q. Let's go to paragraph 36. This  5 talks a bit about platforms appending warning  6 labels. If the term "discrimination" was  7 eliminated from HB20, is there anything else in the  8 language of HB20 that you contend eliminates the  9 ability to attach warning labels or other tags to  10 user-generated content?  11 MR. DISHER: Objection. Form.  12 THE WITNESS: Can you point me to  13 where the statute uses the word  14 "discrimination."  15 BY MR. LYLE:  16 Q. Yeah, just a second. It's  17 143A.001(1). Subsection 1.  18 A. You'll forgive me if I haven't  19 memorized the statute. Is this the only instance  20 of "discriminate" in the statute?  21 Q. Yeah.  22 A. Okay. And your question -- I'm  23  24  25</p>

<p style="text-align: right;">134</p> <p>1 sorry. Now that we've identified what we're</p> <p>2 talking about, can I ask you to restate the</p> <p>3 question?</p> <p>4 Q. Yeah. If the term "discrimination"</p> <p>5 were eliminated, is there anything else in the</p> <p>6 language of HB20 what you contend eliminates</p> <p>7 platforms' ability to attach warning labels or</p> <p>8 other tags to user-generated content?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. LYLE:</p> <p>12 Q. What?</p> <p>13 MR. DISHER: Objection. Form.</p> <p>14 THE WITNESS: Is your question</p> <p>15 what else in the statute?</p> <p>16 BY MR. LYLE:</p> <p>17 Q. Yes.</p> <p>18 A. What else in the statute what?</p> <p>19 Q. What else in the statute prevents</p> <p>20 services' abilities to attach warning labels or</p> <p>21 other tags to user-generated content other than</p> <p>22 discrimination?</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">136</p> <p>1 BY MR. LYLE:</p> <p>2 Q. Well, in your view, would a -- would</p> <p>3 a warning label appearing in a scrolling sidebar,</p> <p>4 for example, deny visibility in a way inconsistent</p> <p>5 with the statute?</p> <p>6 MR. DISHER: Objection. Form.</p> <p>7 THE WITNESS: We're now, you know,</p> <p>8 constructing a hypothetical product which</p> <p>9 may or may not be in the marketplace.</p> <p>10 And that doesn't really seem to be</p> <p>11 consistent with my understanding of how</p> <p>12 companies label or provide interstitials</p> <p>13 to content.</p> <p>14 But as I understand your question,</p> <p>15 it is: Does putting a label in the</p> <p>16 sidebar adjacent to the content</p> <p>17 constitute denying visibility?</p> <p>18 I think I'd have to decide what a</p> <p>19 Texas court is likely to think that that</p> <p>20 means. I don't know that I'm comfortable</p> <p>21 predicting what a Texas state court would</p> <p>22 interpret "deny visibility to" means.</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">135</p> <p>1 MR. DISHER: Objection. Form.</p> <p>2 THE WITNESS: I got it. Thank</p> <p>3 you. I believe denying -- at the least,</p> <p>4 denying equal access or visibility to</p> <p>5 would -- could be interpreted to read on</p> <p>6 attaching warning labels. And, of</p> <p>7 course, warning labels may sometimes</p> <p>8 involve interstitials where the content</p> <p>9 is blurred. Some users may find this</p> <p>10 content emotionally troublesome and</p> <p>11 whatnot. And so at the least, denying</p> <p>12 equal access or visibility to would also</p> <p>13 implicate warning labels and</p> <p>14 interstitials.</p> <p>15 Q. Is there a way to attach warning</p> <p>16 labels to user-generated content that doesn't deny</p> <p>17 visibility?</p> <p>18 MR. DISHER: Objection. Form.</p> <p>19 THE WITNESS: I think that would</p> <p>20 require me to guess what a Texas court</p> <p>21 would interpret, you know, "deny</p> <p>22 visibility" or "reduce visibility to."</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">137</p> <p>1 BY MR. LYLE:</p> <p>2 Q. Well, in your view, is there a</p> <p>3 difference between the extent to which just -- a</p> <p>4 user's -- is there a difference in a user's</p> <p>5 experience of content with which they're</p> <p>6 interacting when the warning label is in a</p> <p>7 scrolling sidebar or if it's actually, like,</p> <p>8 interfering with their viewing of the content?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: Yes. You have</p> <p>11 described two different product</p> <p>12 experiences.</p> <p>13 BY MR. LYLE:</p> <p>14 Q. Okay. Go to paragraph 38, please.</p> <p>15 You talk about decisions to remove a particular</p> <p>16 item of content uploaded by a user.</p> <p>17 A. Uh-huh. Yes.</p> <p>18 Q. Are those -- when you say</p> <p>19 "decisions," are those decisions made by a computer</p> <p>20 or by a person?</p> <p>21 MR. DISHER: Objection. Form.</p> <p>22 THE WITNESS: It depends. It</p> <p>23</p> <p>24</p> <p>25</p>

<p>138</p> <p>1 could be both or either. Ultimately</p> <p>2 almost all computer-implemented decisions</p> <p>3 reflect human input at the front end to</p> <p>4 produce the results.</p> <p>5 BY MR. LYLE:</p> <p>6 Q. Can you explain that?</p> <p>7 A. Generally speaking, when a</p> <p>8 software -- machine-based content moderation is</p> <p>9 deployed, there are choices made at the front end</p> <p>10 by the trust and safety or equivalent team about</p> <p>11 how to populate the variables in that machine-based</p> <p>12 system, how it will work.</p> <p>13 Those choices reflect the human team's</p> <p>14 efforts to implement the governance. And then the</p> <p>15 system effectuates those -- those viewpoints of the</p> <p>16 personnel, and it tends to be an iterative process.</p> <p>17 Q. Meaning?</p> <p>18 A. "Iterative" meaning you do it once,</p> <p>19 you look at the results you're getting, you go</p> <p>20 back, you do it again, and the cycle repeats</p> <p>21 potentially ad infinitum.</p> <p>22 Q. "You" meaning the human?</p> <p>23</p> <p>24</p> <p>25</p>	<p>140</p> <p>1 concurrently with the development of the</p> <p>2 programming.</p> <p>3 Q. Let's go to paragraph 43, please.</p> <p>4 This paragraph talks about the requirement for a</p> <p>5 report dealing [sic] every piece of content over</p> <p>6 which a covered member upheld its policies. Do you</p> <p>7 see the one I'm talking about?</p> <p>8 A. I do, yes.</p> <p>9 Q. How is that different from what you</p> <p>10 described the companies as doing in 24A to 24E</p> <p>11 where some of the members' efforts to, you know,</p> <p>12 suspend accounts and other -- and remove channels</p> <p>13 are detailed?</p> <p>14 MR. DISHER: Objection. Form.</p> <p>15 THE WITNESS: They're totally</p> <p>16 different. 24A refers to the</p> <p>17 enforcement. Paragraph 43 refers to</p> <p>18 reporting on the enforcement. Those are</p> <p>19 apples and oranges.</p> <p>20 MR. LYLE: Right. But aren't 24A</p> <p>21 to 24E, these are reports of enforcement;</p> <p>22 right?</p> <p>23</p> <p>24</p> <p>25</p>
<p>139</p> <p>1 A. The trust and safety team that is</p> <p>2 programming the machine-based system that supports</p> <p>3 their work.</p> <p>4 Q. So when I asked you who is making</p> <p>5 the decision, a computer or machine, you said it</p> <p>6 could be both or it could be either. Was that an</p> <p>7 example you just gave me of where it's both?</p> <p>8 A. Ultimately all decisions are made by</p> <p>9 the humans. The machines simply are effectuating</p> <p>10 through their programming those decisions. So in</p> <p>11 the moment, the decision might be a</p> <p>12 machine-implemented decision, but that is just one</p> <p>13 instantiation of the choice the programmers made.</p> <p>14 Now, you could also have programmers going</p> <p>15 into the back end of the system and saying, our</p> <p>16 automated filtering technology is generating false</p> <p>17 positives or negatives for a copyright protection</p> <p>18 technology that we have licensed, and we need to</p> <p>19 fix that to prevent these false positives.</p> <p>20 And they might individually restore or</p> <p>21 remove content based on whether it's a false</p> <p>22 positive or negative. That's happening</p> <p>23</p> <p>24</p> <p>25</p>	<p>141</p> <p>1 MR. DISHER: Objection. Form.</p> <p>2 THE WITNESS: These are numbers.</p> <p>3 "No" is the answer. No, these are not.</p> <p>4 These are not reports of enforcement.</p> <p>5 BY MR. LYLE:</p> <p>6 Q. Okay. So could you describe the</p> <p>7 difference, please.</p> <p>8 A. Paragraph 43 of the declaration</p> <p>9 refers to a report detailing every piece of content</p> <p>10 over which policies were implemented, which would</p> <p>11 include such things as are defined in Section HB</p> <p>12 20.</p> <p>13 What is described in paragraph 24 are</p> <p>14 top-level aggregate numbers for content, particular</p> <p>15 classes of policy enforcement with respect to</p> <p>16 particular types of content on some products.</p> <p>17 Q. The requirement you describe in 43,</p> <p>18 could -- could an algorithm be created to perform</p> <p>19 that function?</p> <p>20 MR. DISHER: Objection. Form.</p> <p>21 THE WITNESS: I don't know, but</p> <p>22 assuming that it were possible, it would</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">142</p> <p>1 be -- it would impose the same costs that</p> <p>2 we're talking about here. But I don't</p> <p>3 know that such a thing would be possible.</p> <p>4 BY MR. LYLE:</p> <p>5 Q. The same costs as what?</p> <p>6 A. The -- the burden that we've been</p> <p>7 discussing through the course of our conversation</p> <p>8 today.</p> <p>9 Q. Let's go to paragraph 44 where you</p> <p>10 discuss the notice requirement.</p> <p>11 A. Yes.</p> <p>12 Q. So as it stands now, can your</p> <p>13 members send notices to users?</p> <p>14 A. Define "can." Are they -- do you</p> <p>15 mean are they capable of --</p> <p>16 Q. Is it something they ever do?</p> <p>17 A. Some companies will provide some</p> <p>18 form of notice to users based on moderation</p> <p>19 decisions.</p> <p>20 Q. And how -- how is it typically done?</p> <p>21 A. It varies based on the product and</p> <p>22 the service. In some cases, an email could be sent</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">144</p> <p>1 any other action.</p> <p>2 I think informing users of any other action</p> <p>3 you took after viewing content would be far more</p> <p>4 burdensome than putting up a YouTube tombstone</p> <p>5 notice when you took something down because it</p> <p>6 algorithmically was determined to violate a</p> <p>7 copyright hash.</p> <p>8 Q. Could an algorithm be created to</p> <p>9 fulfill this notice requirement?</p> <p>10 MR. DISHER: Objection. Form.</p> <p>11 THE WITNESS: I don't know, but I</p> <p>12 doubt that it could be done in any</p> <p>13 reliable way that would satisfy</p> <p>14 compliance with the statute. And if in</p> <p>15 some moonshot universe that were</p> <p>16 possible, it would be extraordinarily</p> <p>17 expensive to operationalize.</p> <p>18 BY MR. LYLE:</p> <p>19 Q. Do algorithms currently fulfill the</p> <p>20 function of, say, tombstoning YouTube videos?</p> <p>21 A. When -- if -- in that particular</p> <p>22 context, the narrow context of copyright hash</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">143</p> <p>1 to the address on file. In other cases, the user</p> <p>2 might receive a message in an in-product inbox.</p> <p>3 The product may simply be tombstoned, which is a</p> <p>4 term meaning that there is a notification placed on</p> <p>5 the content. One example of this would be YouTube</p> <p>6 videos that are removed for copyright violations,</p> <p>7 and you'll see the little red box with the frown</p> <p>8 face saying this content was removed due to a</p> <p>9 copyright complaint by XYZ. Those are in-product</p> <p>10 notifications.</p> <p>11 But, you know, given the diversity and size</p> <p>12 and scale of industry and the heterogeneity of the</p> <p>13 products, it's difficult to speak uniformly about</p> <p>14 how they notify users as to content removal.</p> <p>15 Q. How would complying with HB20's</p> <p>16 notice requirement require your members to do</p> <p>17 something different from what you just described?</p> <p>18 A. What I described was for some</p> <p>19 classes of content removal in some products. HB 20</p> <p>20 doesn't just refer to content removal. It also</p> <p>21 refers to demonetization, deprioritization,</p> <p>22 addition of an assessment, suspension, removal or</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">145</p> <p>1 resolution, it is highly automated and still not</p> <p>2 without substantial error costs. But it can be</p> <p>3 highly automated because there are licensable</p> <p>4 databases of copyright hashes that can be matched</p> <p>5 against an ingest filter and the content can be</p> <p>6 compared against that hash database with relatively</p> <p>7 high clarity against certain ranges of tolerances,</p> <p>8 and if there's a hit, automatically either prevent</p> <p>9 the content from being uploaded, in which case the</p> <p>10 user gets a notice before it's even posted, or</p> <p>11 perhaps it wasn't filtered at ingest for any number</p> <p>12 of reasons, but then subsequently is discovered.</p> <p>13 When that happens, it is my understanding that that</p> <p>14 particular process is highly automated.</p> <p>15 Q. What about the other examples you've</p> <p>16 described of sending notices to users?</p> <p>17 MR. DISHER: Objection. Form.</p> <p>18 THE WITNESS: No. Copyright is</p> <p>19 perhaps the most -- well, it is certainly</p> <p>20 one of the most automatable systems</p> <p>21 because there are identifiable databases</p> <p>22 that can be supplemented and do not</p> <p>23</p> <p>24</p> <p>25</p>

<p>146</p> <p>1 change. There are general, albeit</p> <p>2 disputed, notions around the ranges of</p> <p>3 tolerance that can be used for</p> <p>4 implementing those databases. And even</p> <p>5 there, there are tons of error costs that</p> <p>6 affects users, individual users and Heads</p> <p>7 of State. And that still requires human</p> <p>8 intervention on the back end to address</p> <p>9 the error cost.</p> <p>10 BY MR. LYLE:</p> <p>11 Q. Let's go to paragraph 46. This is</p> <p>12 where you talk about how a substantial proportion</p> <p>13 of the value provided to users is the service's</p> <p>14 arrangement of information in the way it provides</p> <p>15 the sort of content and experience that the user is</p> <p>16 seeking.</p> <p>17 How -- how do your members know when</p> <p>18 they've given the user what the user is seeking?</p> <p>19 MR. DISHER: Objection. Form.</p> <p>20 THE WITNESS: One never knows that</p> <p>21 you've met a user's preferences unless</p> <p>22 they explicitly tell you, but it can be</p> <p>23</p> <p>24</p> <p>25</p>	<p>148</p> <p>1 site, the more likely they will be to --</p> <p>2 well, I should say this applies</p> <p>3 for advertisement-based services. If</p> <p>4 it's monetized through a different model,</p> <p>5 then we would have to talk about that.</p> <p>6 But assuming we're talking about</p> <p>7 an advertisement-based service, user</p> <p>8 engagement increases the likelihood that</p> <p>9 the site can serve to the user</p> <p>10 advertisements that are relevant to the</p> <p>11 user's interests with which the user may</p> <p>12 interact. And that is a -- when that</p> <p>13 happens, the matchmaker function of the</p> <p>14 platform has been achieved, and that is</p> <p>15 value to the user. That is what a</p> <p>16 ad-supported digital service looks to do.</p> <p>17 BY MR. LYLE:</p> <p>18 Q. And is it true that higher rates of</p> <p>19 user engagement appeal to the advertisers that are</p> <p>20 paying to place their ads there?</p> <p>21 MR. DISHER: Objection. Form.</p> <p>22 THE WITNESS: In many contexts,</p> <p>23</p> <p>24</p> <p>25</p>
<p>147</p> <p>1 inferred based on users' behavior.</p> <p>2 BY MR. LYLE:</p> <p>3 Q. How -- how is that? Can you explain</p> <p>4 that process?</p> <p>5 MR. DISHER: Objection. Form.</p> <p>6 THE WITNESS: The extent to which</p> <p>7 they continue to use the product.</p> <p>8 Perhaps they leave positive reviews in</p> <p>9 other contexts. Other indirect indicia:</p> <p>10 Site traffic, time on site. Various</p> <p>11 analytical variables that are used in the</p> <p>12 internet community to assess user</p> <p>13 engagement.</p> <p>14 BY MR. LYLE:</p> <p>15 Q. Which of what you just -- okay. So</p> <p>16 user -- does user engagement bear any relationship</p> <p>17 to advertising revenue?</p> <p>18 A. It can. Yes.</p> <p>19 Q. Where -- where?</p> <p>20 MR. DISHER: Objection. Form.</p> <p>21 THE WITNESS: All else equal, a</p> <p>22 more -- the more a user engages with the</p> <p>23</p> <p>24</p> <p>25</p>	<p>149</p> <p>1 not necessarily all.</p> <p>2 BY MR. LYLE:</p> <p>3 Q. What kind of efforts did CCIA make</p> <p>4 when HB 20 was in the legislative process against</p> <p>5 it?</p> <p>6 A. Because that advocacy was not within</p> <p>7 the scope of my declaration, I cannot, off the top</p> <p>8 of my head, tell you precisely what the association</p> <p>9 did. However, in the -- the association, at the</p> <p>10 least, may have issued public statements about the</p> <p>11 statute.</p> <p>12 Q. Did the association issue public</p> <p>13 statements?</p> <p>14 A. I'd have to go back and verify. I</p> <p>15 believe we did, but I do not precisely recall.</p> <p>16 Q. Did the association do anything</p> <p>17 more?</p> <p>18 A. I believe we did, but I do not</p> <p>19 precisely recall the scope of our advocacy ex-ante.</p> <p>20 Q. So you're not going to describe any</p> <p>21 more advocacy actions CCIA took with respect to HB</p> <p>22 20 apart from they issued public statements?</p> <p>23</p> <p>24</p> <p>25</p>

<p>150</p> <p>1 MR. DISHER: Objection. Form.</p> <p>2 THE WITNESS: I can only describe</p> <p>3 to you what I remember.</p> <p>4 BY MR. LYLE:</p> <p>5 Q. Did CCIA provide funding to</p> <p>6 opposition groups?</p> <p>7 A. Define "opposition groups."</p> <p>8 Q. Groups opposing the bill.</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: The association did</p> <p>11 not provide funding to any organization</p> <p>12 with the instruction that it should</p> <p>13 oppose the bill.</p> <p>14 BY MR. LYLE:</p> <p>15 Q. Did CCIA provide funding to any</p> <p>16 organizations that did oppose the bill?</p> <p>17 A. The association supports a variety</p> <p>18 of entities in its role, and I'm not in a position</p> <p>19 to tell you what each and every one of those people</p> <p>20 may have said about the statute.</p> <p>21 Q. Do you know if CCIA provided money</p> <p>22 to any organization that opposed the bill?</p> <p>23</p> <p>24</p> <p>25</p>	<p>152</p> <p>1 A. In connection with --</p> <p>2 MR. DISHER: Go ahead.</p> <p>3 THE WITNESS: In connection with</p> <p>4 HB 20? No one.</p> <p>5 BY MR. LYLE:</p> <p>6 Q. Are there any attempts to kill HB 20</p> <p>7 in any way that we haven't discussed that CCIA or</p> <p>8 the CCIA PAC engaged in?</p> <p>9 MR. DISHER: Objection. Form.</p> <p>10 THE WITNESS: Excluding this</p> <p>11 lawsuit?</p> <p>12 BY MR. LYLE:</p> <p>13 Q. Yeah.</p> <p>14 A. Define "kill."</p> <p>15 Q. To prevent the bill from being</p> <p>16 passed.</p> <p>17 A. Outside of what we have discussed</p> <p>18 here, I'm not aware of the association having taken</p> <p>19 any other steps but for this litigation.</p> <p>20 Q. What about the CCIA PAC?</p> <p>21 A. The PAC only contributes to federal</p> <p>22 candidates at present, and sparingly so.</p> <p>23</p> <p>24</p> <p>25</p>
<p>151</p> <p>1 A. To my knowledge, I am not aware of</p> <p>2 any organization that the association has supported</p> <p>3 that opposed the enactment of the bill.</p> <p>4 Q. What about opposing various</p> <p>5 provisions of the bill?</p> <p>6 A. The same. To my knowledge, no.</p> <p>7 Q. Did CCIA provide funding to any</p> <p>8 legislators?</p> <p>9 A. Funding?</p> <p>10 Q. Yes, like campaign contributions.</p> <p>11 A. Ah. That's a little bit different.</p> <p>12 In Texas, no.</p> <p>13 Q. Anywhere else?</p> <p>14 A. The association itself does not</p> <p>15 provide campaign contributions to anyone. The</p> <p>16 association has an associated PAC which may provide</p> <p>17 contributions. That PAC has made no contributions</p> <p>18 to state legislators in Texas.</p> <p>19 Q. What is the name of that PAC?</p> <p>20 A. CCIA PAC.</p> <p>21 Q. Who has it made contributions to in</p> <p>22 connection with HB 20?</p> <p>23</p> <p>24</p> <p>25</p>	<p>153</p> <p>1 Q. What attempts has CCIA engaged in to</p> <p>2 alter the text of HB 20?</p> <p>3 A. Other than this lawsuit?</p> <p>4 Q. Yes.</p> <p>5 A. Other than this lawsuit and any</p> <p>6 public statements the association may have made</p> <p>7 prior to enactment and potentially some public</p> <p>8 correspondence that I may or may not recall,</p> <p>9 nothing.</p> <p>10 Q. Okay. So no other lobbying</p> <p>11 activities?</p> <p>12 A. Not to my recollection.</p> <p>13 Q. Do you know the specifics of how</p> <p>14 each one of your members' algorithms works to</p> <p>15 moderate content?</p> <p>16 MR. DISHER: Objection. Form.</p> <p>17 THE WITNESS: I cannot speak to</p> <p>18 the specifics of each member's</p> <p>19 machine-implemented policies, assuming</p> <p>20 that's what you mean by "algorithms," in</p> <p>21 content moderation. I understand them at</p> <p>22 a general level as an industry executive</p> <p>23</p> <p>24</p> <p>25</p>

<p>154</p> <p>1 and expert.</p> <p>2 BY MR. LYLE:</p> <p>3 Q. Are there significant differences</p> <p>4 between them, company to company?</p> <p>5 A. There can be. They vary based on --</p> <p>6 their sophistication varies based on the size and</p> <p>7 resources of the company. What they operate</p> <p>8 against based -- varies based on the underlying</p> <p>9 governance which, as we've discussed, can vary</p> <p>10 considerably based on the kind of products, the</p> <p>11 user base, the type of community that the service</p> <p>12 is attempting to cultivate with that product or</p> <p>13 products. It's difficult to paint them all with</p> <p>14 one brush.</p> <p>15 Q. When did NetChoice and CCIA enter</p> <p>16 into a common interest agreement?</p> <p>17 A. I cannot tell you the date of that</p> <p>18 agreement off the top of my head. But prior to</p> <p>19 planning for this lawsuit.</p> <p>20 Q. Do you have any estimate as to how</p> <p>21 many -- was it like a year, a year or more?</p> <p>22 A. I don't recall.</p> <p>23</p> <p>24</p> <p>25</p>	<p>156</p> <p>1 Florida?</p> <p>2 A. The common interest agreement</p> <p>3 predated the litigation in Florida.</p> <p>4 Q. Should CCIA be seen by the public as</p> <p>5 agreeing with the viewpoints expressed by its</p> <p>6 members?</p> <p>7 MR. DISHER: Objection. Form.</p> <p>8 THE WITNESS: In some cases, but</p> <p>9 not all cases.</p> <p>10 BY MR. LYLE:</p> <p>11 Q. Which cases?</p> <p>12 MR. DISHER: Objection. Form.</p> <p>13 THE WITNESS: Our members express</p> <p>14 many viewpoints. They are a very</p> <p>15 heterogenous group. The association does</p> <p>16 not endorse any and all messages that its</p> <p>17 members make. Much of what they say is</p> <p>18 irrelevant to the association's advocacy</p> <p>19 on behalf of the technology sector.</p> <p>20 Insofar as the member companies'</p> <p>21 viewpoints are consistent with the</p> <p>22 association's advocacy for open markets,</p> <p>23</p> <p>24</p> <p>25</p>
<p>155</p> <p>1 Q. Two years or more?</p> <p>2 A. Probably not more than two years.</p> <p>3 Q. How certain are you about that?</p> <p>4 A. On a scale of 1 to 10?</p> <p>5 Q. Yes.</p> <p>6 A. Like two years, I'd say like nine.</p> <p>7 Q. Okay. Was it as recently as six</p> <p>8 months ago?</p> <p>9 A. I don't recall.</p> <p>10 Q. Three months ago?</p> <p>11 A. I am terribly busy, and I do not</p> <p>12 have the ability to pluck dates like this out of my</p> <p>13 memory. I applaud those of you who do.</p> <p>14 Q. So you're declining to give even an</p> <p>15 estimate of when you entered into a common interest</p> <p>16 agreement with NetChoice?</p> <p>17 MR. DISHER: Objection. Form.</p> <p>18 THE WITNESS: I cannot provide you</p> <p>19 an accurate assessment, and I'm declining</p> <p>20 to give you an inaccurate one.</p> <p>21 BY MR. LYLE:</p> <p>22 Q. Was it prior to CCIA's litigation in</p> <p>23</p> <p>24</p> <p>25</p>	<p>157</p> <p>1 open systems and open networks, then</p> <p>2 perhaps; but I think it is a mistake to</p> <p>3 assume that the association is invariably</p> <p>4 aligned with its members. But it seeks</p> <p>5 to advocate to advance that mission and</p> <p>6 industry's general interests and the</p> <p>7 interests of their users.</p> <p>8 BY MR. LYLE:</p> <p>9 Q. Are there any of your members whose</p> <p>10 views you would view CCIA would like to be seen as</p> <p>11 endorsing?</p> <p>12 MR. DISHER: Objection. Form.</p> <p>13 THE WITNESS: I don't believe the</p> <p>14 association's role is to endorse members'</p> <p>15 opinions, and I do not set out or get up</p> <p>16 in the morning looking to endorse what</p> <p>17 companies say. The association seeks to</p> <p>18 foster its mission, the users -- the</p> <p>19 interests of -- of industry and its</p> <p>20 users.</p> <p>21 BY MR. LYLE:</p> <p>22 Q. Are there entities that have sought</p> <p>23</p> <p>24</p> <p>25</p>

<p>158</p> <p>1 membership in CCIA who you have not allowed in 2 because you want to be disassociated from -- 3 MR. DISHER: Objection. Form. 4 Q. -- that they expressed? 5 MR. DISHER: Objection. Form. 6 THE WITNESS: Albeit not in recent 7 memory, there have been instances that I 8 do not precisely recall wherein the 9 companies pursuing membership have been 10 rejected. 11 BY MR. LYLE: 12 Q. Do you remember who those were? 13 A. Not -- not all of them specifically. 14 I do know that perhaps within the last decade, the 15 association refused an application for membership 16 by Huawei. 17 Q. By who? 18 A. Huawei. 19 Q. If Porn Hub applied for membership 20 in CCIA, would CCIA accept their application? 21 MR. DISHER: Objection. Form. 22 THE WITNESS: The application 23 24 25</p>	<p>160</p> <p>1 future, sitting here today, if I were to 2 receive an application from Porn Hub, I 3 believe I would recommend the board not 4 entertain it. 5 BY MR. LYLE: 6 Q. What about Alt Right chat rooms like 7 4Chan, what would your recommendation there be as 8 far as accepting them as a member? 9 MR. DISHER: Objection. Form. 10 THE WITNESS: It would depend on 11 whether or not the service indicated that 12 they were willing to subscribe to the 13 mission and support the association's 14 advocacy. 15 BY MR. LYLE: 16 Q. How could they credibly indicate 17 that to you? 18 MR. DISHER: Objection. Form. 19 THE WITNESS: Are you suggesting 20 that they don't have the credibility to 21 make that representation? 22 23 24 25</p>
<p>159</p> <p>1 process involves the leadership 2 recommending membership to the board and 3 approval by the board. I only control 4 one of those two phases. I cannot speak 5 to what the board would do. 6 BY MR. LYLE: 7 Q. Would you, in your phase of 8 assessing membership, accept Porn Hub as a member? 9 A. That is a very -- 10 MR. DISHER: Objection. Form. 11 THE WITNESS: That's an 12 interesting question. I think it 13 would -- it would depend on the 14 circumstances, but my instinct is that 15 notwithstanding the legality of its 16 content, that an adult service could 17 generate brand damage for an association 18 like mine. 19 MR. LYLE: So would you recommend 20 they be accepted or not? 21 MR. DISHER: Objection. Form. 22 THE WITNESS: Predicting the 23 24 25</p>	<p>161</p> <p>1 BY MR. LYLE: 2 Q. No, I'm just asking you. 3 MR. DISHER: Same objection. 4 THE WITNESS: It would require a 5 series of conversations and some 6 discussions about how a particular 7 company pursues public policy and what 8 policies it pursues and expects to 9 pursue. 10 BY MR. LYLE: 11 Q. All right. Let's go back to your 12 declaration generally. Can you give me the names, 13 please, of everybody that was involved in the 14 preparation of your declaration? 15 A. Including counsel? 16 Q. Yes. 17 MR. DISHER: Just to be clear, 18 I'll instruct you not to answer the 19 substance of those conversations, but 20 simply to identify who you talked to or 21 may have talked to about the declaration, 22 I'll allow. 23 24 25</p>

<p>162</p> <p>1 THE WITNESS: The declaration</p> <p>2 was -- was prepared -- I spoke with</p> <p>3 our senior policy counsel in the</p> <p>4 preparation of the declaration.</p> <p>5 BY MR. LYLE:</p> <p>6 Q. What's his or her name?</p> <p>7 A. Ali Sternburg. And I think as well</p> <p>8 as members of our outside counsel at Lehotsky</p> <p>9 Keller.</p> <p>10 Q. Which people?</p> <p>11 A. I have to think. Counsel here, Todd</p> <p>12 Disher. I don't precisely recall which other</p> <p>13 members of the Lehotsky team I spoke with in</p> <p>14 preparation of this -- the declaration.</p> <p>15 Q. Do you remember how many you spoke</p> <p>16 with?</p> <p>17 A. Not precisely.</p> <p>18 Q. So apart from Mr. Disher, these few</p> <p>19 members of Lehotsky that you don't remember, and</p> <p>20 Ms. Sternburg, did you speak to anyone else about</p> <p>21 your declaration?</p> <p>22 A. Not that I recall, no.</p> <p>23</p> <p>24</p> <p>25</p>	<p>164</p> <p>1 have told him, what we might or might not</p> <p>2 have provided him in terms of attorney</p> <p>3 work product.</p> <p>4 So to the extent you want to ask</p> <p>5 him who he talked to, that is totally</p> <p>6 fine. To the extent you want to ask him</p> <p>7 what input he was provided by his counsel</p> <p>8 on his declaration, that is absolutely</p> <p>9 protected, and I will instruct the</p> <p>10 witness not to answer those questions.</p> <p>11 MR. LYLE: Mr. Disher, I'm asking</p> <p>12 for the number of revisions, which has</p> <p>13 nothing to do with the content of your</p> <p>14 communications.</p> <p>15 MR. DISHER: It does indeed,</p> <p>16 because purely the simple fact that</p> <p>17 you're implying there was any revisions</p> <p>18 reveals communications that he might or</p> <p>19 might not had with counsel in addition to</p> <p>20 work product that counsel might or might</p> <p>21 not have provided to him.</p> <p>22 So I absolutely will shut down</p> <p>23</p> <p>24</p> <p>25</p>
<p>163</p> <p>1 Q. Did anybody else see drafts of your</p> <p>2 declaration?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. Did you correspond with anybody else</p> <p>5 about your declaration?</p> <p>6 A. Outside of counsel?</p> <p>7 Q. Outside of the people you've just</p> <p>8 described.</p> <p>9 A. Not that I recall.</p> <p>10 Q. Do you remember when you spoke to</p> <p>11 each of these people?</p> <p>12 A. Within two to three weeks prior of</p> <p>13 the filing of the Complaint.</p> <p>14 Q. How many revisions did your</p> <p>15 declaration go through?</p> <p>16 MR. DISHER: No, I will instruct</p> <p>17 you not to answer that question.</p> <p>18 MR. LYLE: That doesn't have to do</p> <p>19 with communications, though.</p> <p>20 MR. DISHER: It does, in fact,</p> <p>21 have to do with communications. You're</p> <p>22 getting into what we might or might not</p> <p>23</p> <p>24</p> <p>25</p>	<p>165</p> <p>1 this line of questioning right here.</p> <p>2 You're entitled to know who he talked to</p> <p>3 and when he talked to us, but you're not</p> <p>4 entitled to know anything related to the</p> <p>5 substance of those communications,</p> <p>6 including if there were -- the mere fact</p> <p>7 of whether there were or were not</p> <p>8 revisions to his declaration.</p> <p>9 That is privileged. And, quite</p> <p>10 frankly, we've allowed you quite a bit of</p> <p>11 leeway, but this is where we draw the</p> <p>12 line, and this is where I instruct the</p> <p>13 witness not to answer.</p> <p>14 MR. LYLE: Our position is that</p> <p>15 the question about the number of drafts</p> <p>16 the declaration went through doesn't</p> <p>17 speak to content and is not privileged</p> <p>18 and that your objection is improper.</p> <p>19 MR. DISHER: I disagree.</p> <p>20 MR. LYLE: We're going to preserve</p> <p>21 it.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>166</p> <p>1 BY MR. LYLE:</p> <p>2 Q. To form the opinions you express in</p> <p>3 your declaration, what -- what did you consult</p> <p>4 apart from the people that we've discussed?</p> <p>5 A. Let's see. I consulted the bill.</p> <p>6 I, as we've discussed, consulted with counsel. I</p> <p>7 consulted the documents in the Florida litigation.</p> <p>8 And generally my memory of industry practice and</p> <p>9 how these processes work. I consulted the</p> <p>10 documents that are cited in the footnotes to the</p> <p>11 declaration insofar as they substantiate the</p> <p>12 assertions that I'm making in the declaration.</p> <p>13 Q. Did you consult any documents that</p> <p>14 you didn't produce?</p> <p>15 A. Not other than what I've listed.</p> <p>16 Q. Did you consult anything not</p> <p>17 produced to refresh your memory of 15 years of</p> <p>18 industry practice?</p> <p>19 A. Not that we haven't produced.</p> <p>20 MR. DISHER: Let's take a quick</p> <p>21 break.</p> <p>22 THE VIDEOGRAPHER: We are going</p> <p>23</p> <p>24</p> <p>25</p>	<p>168</p> <p>1 express when they make those content moderation</p> <p>2 decisions?</p> <p>3 A. They are attempting to express the</p> <p>4 values embedded in their policies and to deliver on</p> <p>5 the commitments that they've made to their users</p> <p>6 about the kind of community, the kind of content</p> <p>7 that those users can expect in the -- in the</p> <p>8 product.</p> <p>9 MR. DISHER: Thank you. I have</p> <p>10 nothing further.</p> <p>11 THE VIDEOGRAPHER: We're off the</p> <p>12 record at 6:13 p.m. And this concludes</p> <p>13 today's testimony given by Matthew</p> <p>14 Schruers.</p> <p>15 (Proceedings adjourned at</p> <p>16 6:13 PM)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>167</p> <p>1 off the record. This is the end of media</p> <p>2 Unit No. 3. The time is 6:07 p.m.</p> <p>3 (Recess)</p> <p>4 THE VIDEOGRAPHER: We're back on</p> <p>5 the record. This is the beginning of</p> <p>6 media Unit No. 4. The time is 6:12 p.m.</p> <p>7 MR. LYLE: Pass the witness.</p> <p>8 EXAMINATION BY</p> <p>9 MR. DISHER:</p> <p>10 BY MR. DISHER:</p> <p>11 Q. Mr. Schruers, I just have a few</p> <p>12 questions for you. Thank you for your time today</p> <p>13 so far.</p> <p>14 Earlier today you mentioned fostering</p> <p>15 specific viewpoints and content moderation</p> <p>16 generally. I just want to be clear about one</p> <p>17 thing.</p> <p>18 In your opinion, are content moderations --</p> <p>19 excuse me, are content moderation decisions</p> <p>20 expressive?</p> <p>21 A. Yes, unquestionably.</p> <p>22 Q. What are your members trying to</p> <p>23</p> <p>24</p> <p>25</p>	<p>169</p> <p>1 DISTRICT OF COLUMBIA: SS</p> <p>2 I, Barbara Moore, a Registered Court Reporter</p> <p>3 of the District of Columbia, do hereby certify that</p> <p>4 these proceedings took place before me at the time</p> <p>5 and place herein set out, and the proceedings were</p> <p>6 recorded stenographically by me and this transcript</p> <p>7 is a true record of the proceedings.</p> <p>8</p> <p>9 I further certify that I am not of counsel to</p> <p>10 any of the parties, nor an employee of counsel nor</p> <p>11 related to any of the parties, nor in any way</p> <p>12 interested in the outcome of this action.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 BARBARA MOORE, CRR, RMR</p> <p>18</p> <p>19</p> <p>20 My Commission Expires:</p> <p>21 July 31, 2023</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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